LINCOLN
THE LAWYER

FREDERICK TREVOR HILL.

Ralph J. Block

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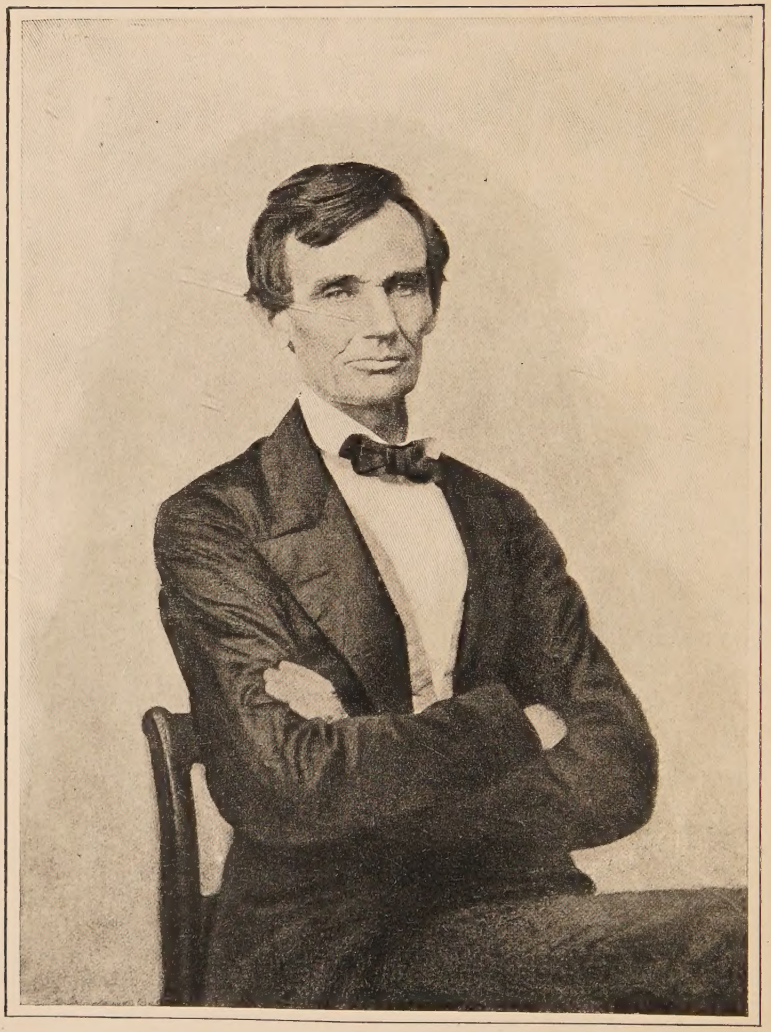

From an ambrotype, taken in 1860, owned by Major William H. Lambert

A. Lincoln

LINCOLN
THE LAWYER

BY

FREDERICK TREVOR HILL

AUTHOR OF "THE CASE AND EXCEPTIONS,"
"THE ACCOMPLICE," ETC.

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TO
THE LADY

"I lay great stress on Lincoln's career as a lawyer—much more than his biographers do; . . . and I am sure his training and experience in the courts had much to do with the development of those forces of intellect and character which he soon displayed on a broader arena."

The Hon. Joseph H. Choate on Lincoln, at Edinburgh, Scotland, November 13, 1900

"The best training he [Lincoln] had for the Presidency, after all, was his twenty-three years' arduous experience as a lawyer traveling the circuits of the courts of his district and State. Here he met in forensic conflict, and frequently defeated, some of the most powerful legal minds of the West. In the higher courts he won still greater distinction in the important cases coming to his charge."

President McKinley at the Marquette Club, February 12, 1896.

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FOREWORD

The testimony concerning Abraham Lincoln is voluminous—the exhibits are almost numberless; but one important point in the vast record has been slighted by the mighty array of able and eminent advocates who have presented it to the world, for no one has heretofore attempted a summing-up of the great President's legal career.

The explanation of this neglect is simple. Lincoln's achievements as a statesman are so transcendently important that they have demanded and justly received exhaustive and well-nigh exclusive consideration. Compared with his historic guidance of the nation, his experience at the bar has appealed to his biographers as being merely episodic.

But if it be true that the statesman's legal training qualified him for his great task; if it be probable that without such training he could not have accomplished his stupendous results; if it be

possible that he would never have been called to his high station unless he had been admitted to the bar—then surely the story of his professional life deserves more than a passing comment, a paragraph, or even a chapter.

It is certainly strange that the literature inspired by Lincoln's record, though vast in quantity and rich in quality, should include no special study of his legal aptitudes. One autobiographical volume of life on the Illinois circuit is coupled with his name; but most of the notable histories dispose of his twenty-three years' practice as an attorney in less than two chapters, and the minor works bury it altogether under a mass of unauthentic anecdote and trivial reminiscence.

But because the influence of Lincoln's legal training can be plainly traced in many of his most momentous actions, because there is evidence that this training proved invaluable to him at critical moments, because he lived true to the noblest ideals of his profession, and was, in the highest meaning of the words, a great lawyer, the treatment which the historians have accorded his pro-

fessional career seems inadequate to the writer, and it is to justify this conclusion that these pages are submitted.

The writer gratefully acknowledges the assistance of all those historians and biographers whose works contain any authentic information concerning Lincoln's career at the bar; he also desires to record his appreciation of the courtesy of the court clerks and other officials who kindly facilitated his work in the examination of the old records of the Illinois circuit courts, and to express his thanks to the Hon. Robert Lincoln, Major William H. Lambert, the Hon. Robert R. Hitt, the Hon. Adlai E. Stevenson, the Hon. James Haines, the Hon. James Ewing, General Alfred Orendorff, Mr. Isaac N. Phillips, the Hon. James Hoblit, and other members of the Illinois Bar, and to Mr. E. M. Prince, Mr. George P. Davis, Mrs. Jessie Palmer Weber, and other officers of the Illinois State Historical Society, and the McLean County Historical Society, for their generous and efficient aid.

Especially is he indebted to the late Judge Lawrence Weldon, of the United States Court of Claims (the last surviving member of the bar who traveled the circuit with Lincoln), who shortly before his death placed at the writer's disposal his recollections of Mr. Lincoln as a lawyer and his reminiscences of the days when he and the great President practised together on the old Eighth Illinois Circuit.

LINCOLN
THE LAWYER

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I

LINCOLN'S MYTHICAL BIRTHRIGHT TO THE LAW

ONE of his eulogists declares that "Lincoln is not a type. He stands alone—no ancestors—no fellows—no successors." The facts fully justify the tribute.

Assuredly the great Emancipator was a man apart, without equals or followers, and he himself waived all claims to ancestry. "I don't know who my grandfather was," he remarked; "and am much more concerned to know what his grandson will be."

But though the first American knew little about his family history and cared less, his biographers have devoted themselves to the subject with zeal and enthusiasm, and, thanks to them, we now know who his progenitors were, even to the

sixth or seventh generation, and are fully informed of their domiciles and wanderings and the various stations of life to which it pleased God to call them.

The result of all this exhaustive and laborious research is mainly negative; but there are those who find signs in the record, and among the strange conclusions which have been derived from its perusal, perhaps the strangest is that Lincoln inherited his legal talents and aptitudes. Certainly nothing could be more unwarranted than this; for little as there is in his origin to account for him as a man, there is even less to explain him as a lawyer.

Unless we accept the well-supported but not established contention that the great President was descended from the Lincolns of Hingham, Massachusetts, there is absolutely no precedent in the family for his choice of a profession; and those who struggle to prove that he came of a race of jurists and statesmen virtually defeat themselves when they take refuge in the genealogical records of New England.

Samuel Lincoln, the founder of the Massachusetts house, had four sons, and the descendants of some of those sons undoubtedly attained

high distinction at the bar. Indeed, one of them, the Attorney-General of Jefferson's cabinet, declined a nomination to the Supreme Court of the United States, and at least two others were lawyers of recognized ability. But the trouble with these facts is that the distinguished Attorney-General and the other legal luminaries belonged to branches of the Massachusetts family with which Abraham Lincoln was only remotely, if at all, connected; and the shadowy claim that he had any birthright to the law utterly disappears when the record is more closely examined.

The original Lincoln of Hingham was an Englishman who came to America apprenticed as a weaver. His fourth son, Mordecai, from whom the President is supposed to have descended, was a blacksmith.[1] His eldest son, another Mordecai, was a miller and blacksmith. His eldest son, John,—the "Virginia John" of the biographies,—was a farmer; and his third son, Abraham Lincoln's great-grandfather, was likewise a tiller of the soil. This leaves only his grandfather and father to be accounted for, and the former

[1] The genealogists are careful to explain that a blacksmith was not really a blacksmith in those early days, but rather an "iron-worker." ("New England Historic Genealogical Register," Vol. XLI, p. 153 *n.*) This nice distinction does not affect the question at issue, however comforting it may be for other purposes.

was a farmer, and the latter a carpenter. A weaver, two blacksmiths, three farmers, and a carpenter—those are the callings represented by the President's forefathers for seven generations. Small wonder, then, that the believers in heredity have recourse to the collateral branch of the distantly related Massachusetts family for precedents entitling the son of a backwoods carpenter to enter the honorable profession of the law. This is virtually all that is known of Lincoln's antecedents upon which to predicate the theory of his natural talents for the law.

It is more than possible that Lincoln inherited many sterling qualities of mind and character from the worthy mechanics and farmers from whom he was descended, but there is very little on the face of the record to encourage any definite claims on their behalf for the shaping of his career. Certainly the paternal influence was not inspiring. His father was an ignorant man, amiable enough, but colorlessly negative, without strength of character, and with no ambition worthy of the name. His only effort to influence his son's future was a half-hearted attempt to teach him carpentry; but he soon abandoned such instruction and allowed the boy to occupy him-

self with odd jobs about the farm when he could not hire him out to neighbors in need of an extra hand. Nancy Lincoln, the lad's mother, was better educated than most of the pioneer women. She taught her husband to read and write and sent her son to his first school; but she died when he was only about nine years old, and it was his step-mother who encouraged his ambition for education.

All the misinformation concerning Lincoln's professional career is not, however, derived from the experts in heredity. A great deal of nonsense has been written about his early years, and a grave effort has been made to prove him a youth of exceptional promise, a brilliant scholar, and a prodigy of application and industry. As a matter of fact, he did not begin to develop mentally until he was about eighteen,—even in the prime of life his intellectual processes were not quick,—and there is nothing to indicate that he was a particularly industrious boy. Five pedagogues—two in his birthplace, Kentucky, and three in Indiana—share the honor of contributing to his elementary education; but had their pupil been never so gifted, they could scarcely have discovered it, for his schooling

amounted to less than a year in all—about as long as it must have taken some of the minor biographers to collect and record the pointless reminiscences of his alleged schoolmates.

He lived the healthy, outdoor life of the average country lad of the settler days, exhibiting no precocity or abnormal tendencies to distinguish him from his fellows. He was fond of tramping about the country, not caring much for shooting or fishing, but entering into other sports and pastimes with zest and spirit, and excelling at games requiring strength; not in love with work for work's sake, but willing to do his share without grumbling, seeing no visions of coming greatness, and troubling himself with no ponderous thoughts concerning his career. This is the sum and substance of his childhood, and the real inspiration of his very human development has suffered at the hands of the enthusiastic chroniclers who picture him as a child of destiny—dreamy, mysterious, and miraculously endowed.

In one respect he was undoubtedly exceptional. He liked reading—an unusual trait among the pioneer settlers of the Middle West—but exaggerated emphasis has been placed on this charac-

teristic, which was by no means unique. For instance, the books which comprised his earliest reading are admiringly called to our attention, with comments which suggest that they foreshadow his career. The list includes "Æsop's Fables," "Robinson Crusoe," "Pilgrim's Progress," a history of the United States, and Weems's "Life of Washington." There is, of course, nothing remarkable about this catalogue. Almost every item in it formed part of the reading of every intelligent American boy of the period, whether he lived in the backwoods or in the city. Indeed, the only really notable fact about the much-quoted list is that Lincoln worked three days at twenty-five cents a day to compensate for an accidental injury to the "Life of Washington," which he borrowed from "Blue Nose" Crawford. There was nothing angelic about the youthful Lincoln, however. He considered "Blue Nose" as mean as any other boy would have thought him under similar circumstances, and we know that he nicknamed and otherwise ridiculed the stingy old farmer; but his dawning character is indicated by his prompt recognition of the claim and his faithful payment of the damages.

This is one of the few stories touching Lincoln's youth which has any bearing on his temperament or his career. Most of the anecdotes of his boyhood exhibit him as a child of superhuman qualities, and many of them served to misrepresent other great men before he was born.

One episode, founded on fact, however, is responsible for a grave misunderstanding about the impulse which prompted him to follow the law. We know from his own statement that before he had been many years in Gentryville, Indiana, he had borrowed from one source or another all the books he could lay his hands on for a circuit of fifty miles, and among the generous lenders was a Mr. Turnham. This gentleman lent him a copy of the Revised Statutes of Indiana; and, if we are to believe the biographers, it was this volume—as dull a tome as ever lay between sheepskin covers—which appealed to his boyish imagination and inspired his ambition for the profession of the law.

II

THE REAL SOURCE OF LINCOLN'S PROFESSIONAL ASPIRATIONS

HISTORICALLY, this copy of the Indiana Statutes is interesting. It is undoubtedly the first law book which Lincoln ever read; but that its musty, dry-as-dust pages could have fascinated an out-of-doors boy of seventeen, or imbued him with any intense longing for a legal career, is against all human probability. One biographer asserts that he read it with all the excitement and avidity with which an ordinary boy would read the romances of Dumas, and another caps this with the statement that his hero "read and re-read it until he had almost committed its contents to memory; and in after years, when any one cited an Indiana law, he could usually repeat the exact text and often give the numbers of the page, chapter, and paragraph."

To appreciate the absurdity of such statements it is only necessary to examine the volume in

question. It is dull as only statute law can be dull, about as easily memorized as the dictionary, and of no enduring authority. Only a short time after he had read this compilation[1] the legislature amended some of its provisions, annulled others, and generally revised the contents. And yet we are gravely told that "in after years, when any one cited an Indiana law, he could usually repeat the exact text and often give the numbers of the page, chapter, and paragraph" of this obsolete revision. What a useful accomplishment!

That is a fair sample of the grotesque caricaturing which Lincoln has suffered at the hands of sentimentalists not too deeply familiar with human nature, to say nothing of statute lore.

But those who believe in the epoch-marking influence of the volume in question are not satisfied with the concession that it was the first law which Abraham Lincoln read. They contend that it not only inspired his choice of a profession, but also imparted his first knowledge of American government; and they conjure up a diverting picture of the anointed youth reading

[1] The Revised Statutes of Indiana which Lincoln received from Mr. Turnham were published in 1824. He certainly never saw them before 1826. They were revised in 1831, and a little later they were again amended. The original copy which he handled is in existence.

with eager eyes and glowing cheeks the wondrous words of the Declaration of Independence and the Constitution of the United States which prefaced its pages.

This conception does credit to the imagination, but it fades under the cold light of facts. Long before he borrowed Turnham's famous Statutes, Lincoln had read at least one history of the United States, to say nothing of Parson Weems's "Life of Washington." Possibly he had never read either the Constitution or the Declaration in its entirety until the Indiana revision came into his possession; but to claim that he obtained his first insight into American government, at the age of seventeen, from that volume, is sacrificing sense to sentiment. Moreover it argues a lamentable ignorance of the wisdom dispensed at the country stories, especially in a community where, to use a common phrase of the times, "There was a politician on every stump."

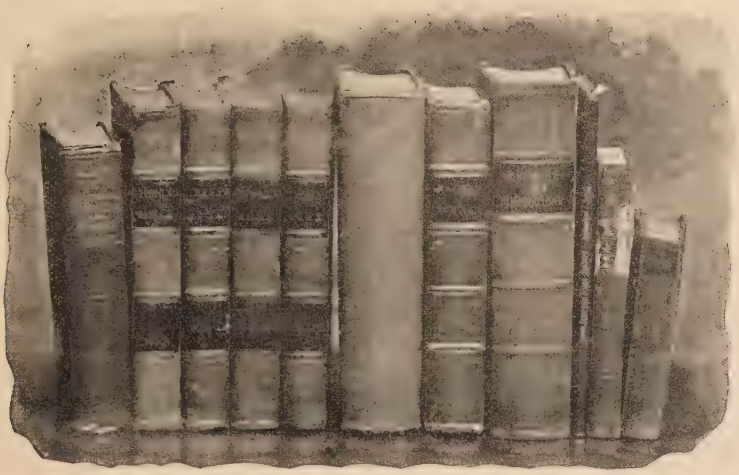
Jones's store was the popular forum of Gentryville, and Lincoln had been a constant attendant at all its sessions since he entered his teens. There he had met and talked with lawyers, listened to stump-speakers, tried a little oratory

himself, and won considerable reputation as a ready talker among his fellow-townsmen; and there, most important of all, he had heard of the doings of the Boonville court, and had kept in intimate touch with its proceedings.

Life at Gentryville, Indiana, with its dull, trivial round of hard labor at delving, grubbing, corn-shucking, rail-splitting, and the like, could not have been exhilarating. Doubtless it was a happy enough life for an easy-going, good-humored, healthy, growing boy; but he would have been stupid, indeed, if he had not availed himself of such amusements as the neighborhood afforded, and the one great diversion and intellectual stimulant of the community came through the sessions of the Boonville court.

Boonville was fully fifteen miles from Gentryville, but people often traveled farther than that to attend the civil and criminal trials at the county-seat. Every term of the court, of course, meant a market; and the pioneers looked forward to the coming of the circuit judge, not only because it promised entertainment, but also for business reasons.

The court was their theater, their lecture-platform, their common meeting-place, their center



These books, from left to right, are "Religious Truth Illustrated from Science"—Hitchcock; "Gibbon's Rome," 4 vols.; "Dictionary of Congress"—Lanman; "Paley's Works"; "Angell on Limitations"; "The Republican Party"—Sumner, 1860; "The Illinois Conveyancer," and "A Dictionary of Primary Schools"

These books, from left to right, are "Journal of the House of Representatives of the Tenth General Assembly of Illinois," "Life of Black Hawk," "Illinois Convention Journal," "Laws of Illinois, 1841," "Revised Statutes, Illinois, 1845," "Law Register, Livingston, 1852," "Dean's Medical Jurisprudence," and "Acts and Resolutions passed at the Thirtieth Congress of the United States, 1848"

Books From Abraham Lincoln's Library

of government, and to it they flocked for mental refreshment and recreation in a holiday spirit. Entire families would sometimes make the trip, virtually living in their wagons while the session lasted, and the proceedings supplied material for conversation and discussion long after the event. Altogether it was a great occasion, and the court-house was usually full to overflowing.

It is not surprising, then, that young Lincoln cheerfully trudged to Boonville on foot and seldom missed a trial. There were rare exhibitions of human nature in the legal combats which he witnessed in the little log court-house, plenty of drama and excitement in the clash of the battling attorneys, and a vast deal of information for any active mind. There was also grim, earnest, serious business transacted by the judge and juries—fascinating, engrossing business; and doubtless the youthful Lincoln, listening to the crude legal champions and responding to the dawning powers within him, mentally matched himself against them. Surely it must have been then that his imagination was first quickened and his ambition vitalized and focussed.

Unfortunately, there are no records of the Boonville court in existence to-day, but there is

evidence that he witnessed at least one hotly contested murder trial within its walls, and we know that the event made a profound impression on his mind. The defendant in that case was represented by one Breckenridge, and the advocate made such a powerful summing-up for his client that young Lincoln, with boyish enthusiasm, sought him out after the verdict to congratulate him on the speech and its result.

"I felt," he remarked to Breckenridge in the White House many years afterward, "that if I could ever make as good a speech as that, my soul would be satisfied, for it was the best I had ever heard."

Even assuming for the sake of argument, that this episode occurred *after* he had perused the Revised Statutes of Indiana, it ought not to be difficult to decide which exerted the more powerful influence on his future career—the flaming eloquence of the backwoods orator or the lifeless pages of statute law.

III

THE PRIMITIVE BENCH AND BAR OF INDIANA

OF course the Boonville court-house bore no resemblance to anything even remotely suggesting the domed dignity of a modern hall of justice; but, though no picture of the building has been preserved, the loss is not important, for similar structures have been accurately described by lawyers who practised in those early days.

For instance, we know that the first court-house at Springfield—destined to be the capital of Illinois—was erected at a cost of forty-two dollars and fifty cents.[1] It was built of rough logs and consisted of one room,—"the jury retiring to any sequestered glade they fancied for their deliberations,"—and the Indiana courts were almost as unpretentious. They were either

[1] It is a significant fact that the jail cost twice as much as the court-house.

frame or log structures, generally divided into two rooms, the larger serving as a place of trial and the smaller as clerk's office, judge's chambers, and jury-room combined. At one end of the trial-room there was usually a platform three feet high, and on this was placed the judge's bench, a rough board affair capable of seating three men. In front of this platform stood a crude plank settee for the lawyers and a small table for the clerk of the court, and official privacy was insured for those dignitaries by an improvised railing consisting of a long pole fastened to the walls with withes. The rest of the space was open to the public, and so freely did it avail itself of the privilege that there was seldom even standing room inside the building, and seats in the windows were always at a premium.

One of the circuit prosecuting attorneys of Indiana who practised during Lincoln's boyhood has left a record of his observations at Fall Creek. "The court was held in a double log cabin," he writes; "the grand jury sat upon a log in the woods, and the foreman signed the bills of indictment, which I had prepared, upon his knee. There was not a petit juror that had

shoes on; all wore moccasins and were belted around the waist and carried side-knives used by the hunters."

It must not be inferred from this that only jurors went armed and caparisoned in this fashion. In the days when Lincoln haunted the Boonville courts, everybody, from the judge to the humblest spectator, wore deer-hide suits and moccasins of the same material. Indeed, he had arrived at manhood before clothing of dyed wool and tow began to be worn, and for a long time afterward it was only the women who adopted such garments.

But the judge and juries in buckskin were shrewd and fearless administrators of justice, and the lawyers who practised before them were men of equal caliber. Almost anyone who chose to do so could follow the profession of the law.[1] There were no regular examinations for admission to the bar, and a license to practice could be obtained by any applicant of good moral standing, which was about the only qualification most of the practitioners lacked, according to one au-

[1] This is virtually the case in Indiana to-day. See Horner's annotated Indiana Statutes (revision of 1881 supplemented to 1901), chap. ii, art. 31, sec. 962.

thority. If a man was a fluent talker, pugnacious, shrewd, and able "to think on his feet," he was fully equipped for the duties of the profession. Education was not necessary, and although there were a few advocates in the early history of Indiana who were fairly well read, none of them had any pretentions to learning. Indeed, scholarship would have been lost on the courts, to say nothing of the juries, for many of the judges were uneducated, some were almost illiterate, and none of them well grounded in the law or versed in its technicalities.

General Marston Clark was one of the judges whose portrait has fortunately been preserved. He was an uneducated, backwoods, muscular six-footer whose judicial costume was a hunting-shirt, leather pantaloons, and a fox-skin cap, with a long queue down his back and who wrote his name "as large as John Hancock in the Declaration of Independence." Truly a formidable figure of a man, and although history reports that he was "no lawyer," his conduct of the case of one John Ford demonstrates that no lawyer could trifle with him.

This John Ford was arrested for horse-stealing, and his counsel interposed various technical

objections to the indictment on the ground that the prisoner's name was John H. Ford, and not plain John Ford; that there was no value alleged for the stolen horse; and, finally, that the animal was not a horse, but a gelding. All of these preliminary pleas were overruled by the court, and the trial proceeded, with the result that the prisoner was convicted and sentenced to thirty-nine lashes. Then the defendant's attorney moved for a new trial because there was no proof that the crime had been committed in Indiana. Judge Clark was no lawyer, but he saw the force of this contention, and advised counsel that he would take the matter under consideration and render his decision within twenty-four hours. The moment the court adjourned, however, he ordered the sheriff to see that the thirty-nine lashes were well laid on, and when the court reopened next morning, he gravely took up the unfinished business of the previous day. He had come to the conclusion, he announced, that the point raised by Ford's attorney was well taken and that a new trial must be granted. But at this juncture the prisoner interposed in his own behalf, protesting that he knew when he was beaten, and that he had had

enough law and desired the court to take no further trouble on his account.

Another judge is reported to have quelled a disturbance in his court by descending from the bench and thrashing the nearest offenders to a standstill.

"I don't know what power the law gives me to keep order in this court," he admitted, as he resumed his coat and the bench, "but I know very well the power God Almighty gave me."

Little informalities of this sort were not infrequent, but they detracted nothing from the dignity of the courts, though the free-and-easy proceedings were sometimes astonishing.

"As I entered the court-room," relates an observer of the Hudson trial,[1] "the judge was sitting on a block, paring his toe-nails, when the sheriff entered out of breath and informed the court that he *had six jurors tied up and his deputies were running down the others.*"

Apparently jury duty was no more popular in those days than it is now.

But because these frontier courts and their presiding officers lacked the formality and decorum which a later day demands, it must not be

[1] See Smith's "Early Trials in Indiana."

inferred that there was any element of farce or travesty in the administration of the law. The surroundings which to-day lend substance and dignity to courts would not have been tolerated on the frontier. Formalities would have divested the proceedings of all meaning and interest for the people, and made a mummery out of what was real. The pioneers were not peasants who had to be impressed by ceremonials and awed into a respect for authority. They were thoughtful, independent men, governing themselves, and the judges, the courts, and the laws were of their own making. The idea of a judge maintaining order with his fists may seem ludicrous to us; but judicial robes, to say nothing of mace-bearers, wigs, and canopies, would have seemed far more laughable to the settlers. They possessed a natural genius for self-government, recognized the authority of the law, *and they fulfilled it.*

In the case of Hudson before referred to, where the judge was surprised at his toilet and the jury had to be corralled by sheriff's deputies, the defendant, a white man indicted for killing an Indian, was promptly convicted despite the fearful prejudice against the redskins which ex-

isted among the pioneers—an exhibition of judicial temperament and regard for duty which should shame many a jury of to-day.

It was among men of this stamp and character that Lincoln passed his boyhood, and it was their administration of justice which won his respect and first encouraged him to think of a legal career.

IV

LEGAL APPRENTICESHIP

LINCOLN had just reached his majority when his father, who always saw promising land on the other side of his fence, decided to migrate from Indiana, and after a long journey, fraught with all the hardships incidental to travel in those days, the family reached Decatur, Macon County, Illinois, in the spring of 1830. Up to that time the young man had given his father the entire benefit of his services, but he had long been anxious to start life on his own account, and shortly after the new homestead was staked out he began to shift for himself. Except in the matter of health and strength, he was poorly equipped to earn his own living, for he had no education beyond reading, writing, and ciphering to the rule of three, and his mental power was still largely undeveloped.

For a year he attempted nothing more ambi-

tious than manual labor, working in the immediate vicinity of his father's house at odd jobs of all sorts, including the splitting of several thousand rails destined to become famous in American history.

One of those odd jobs took him to the village of New Salem, and there he became what the Fell autobiography calls "a sort of clerk" in Offutt's grocery store. The duties of this office were not very onerous, however, and the young clerk was soon devoting every spare moment to his books. People used to meet him trudging along the country roads, reading as he walked; customers found him stretched upon the store counter, absorbed in his books; and his companions reported that he studied late into the night. Certainly he was self-educated in the broadest sense of the term, and it has been truly said that he "never finished his education. To the night of his death he was a pupil, a learner, an inquirer, a seeker after knowledge, never too proud to ask questions, never afraid to admit that he did not know."

Offutt's assistant, however, never had the slightest intention of remaining a clerk, and, mindful of his ambition to become a lawyer,

he attended a debating club, made up of boys of the neighborhood, where he had a chance to "practise polemics," as he expressed it, and speedily gained a reputation among his fellows as a dangerous opponent in argument.

Before the days of this club, however, he had already demonstrated his ability as a speaker. Indeed, he had not been long in Illinois before he had talked down one local orator; and as the general store was the accepted meeting-place and center of public opinion in New Salem, he had unbounded opportunity to exercise his undoubted "gift of gab."

It is not probable that the embryo lawyer obtained much information from the legal luminaries of New Salem, but he attended most of the trials conducted by Bowling Green, the local justice of the peace, who is said to have decided a hog case known as Ferguson *v.* Kelso by declaring that the plaintiff's witnesses were "damned liars, the court being well acquainted with the shoat in question, and knowing it to belong to Jack Kelso." This and other similar exhibitions of judicial temperament were possibly responsible for Lincoln's first bill in the legislature, which was a measure to restrict the

jurisdiction of justices of the peace. It could not have been aimed directly at Bowling Green,[1] however, for he and Lincoln were fast friends, and long before the young student was admitted to the bar he was allowed to practise in an informal way before the eccentric justice.

Springfield was only a few miles from New Salem and there is every reason to believe that Lincoln attended the sessions of the circuit

AUTOGRAPH OF BOWLING GREEN

court at the county-seat; but whatever else he may have done at this time with the definite purpose of preparing himself for his future calling, he was unquestionably developing those traits of character which distinguish really great lawyers from those who are merely successful.

[1] The biographies give several different spellings of the judge's name, and in them he figures as Bowlin and Bowline as well as Bowling Green. The writer has, however, examined documents on file in the Illinois courts signed by the justice, who spelled his name as it appears in the text.

It is a significant fact that in a community where crime was virtually unknown, where plain, straightforward dealing was assumed as a matter of course, and credit was fearlessly asked and given, Lincoln won an enviable reputation for integrity and honor. In a moral atmosphere of this sort ordinary veracity and fairness attracted no particular attention. Honesty was not merely the best policy; it was the rule of life, and people were expected to be upright and just with one another. But when a clerk in a country store walked miles to deliver a few ounces of tea innocently withheld from a customer by an error in the scales, and when he made a long, hard trip in order to return a few cents accidentally overpaid him, he was talked about, and the fact is that "honest Abe" was a tribute, not a nickname.

To suggest that inflexible integrity is indispensable to the make-up of a great lawyer is, of course, to challenge the sneer or the smile of the cynically minded. The jests about honest lawyers have become classic, and they will forever continue to delight. Yet, despite the humorist and the cynic, there is probably no profession in the world which makes greater demands upon

integrity, or presents nicer questions of honor, or offers wider opportunities for fairness, than the profession of the law. The fact that many distinguished practitioners have not maintained the highest standards of the calling, that most of them have compromised for monetary or momentary success, that a few have actually abused their great opportunities, does not in the least impeach the proposition that extraordinary integrity, honor, and fairness are the essential qualities of a great lawyer. It merely demonstrates how rare great lawyers are.

Of course it does not follow that because a lawyer is a good, or even a great, man, he must be a great, or even a good, lawyer. But one thing is certain: no man deserves to be classed as a great lawyer who does not fairly exemplify the noblest aspirations of his calling. If the number of litigations in which a lawyer has been engaged be the true test of professional eminence, some of the modern "negligence attorneys" must be admitted to the highest station; if the monetary importance of their clientage is to count, the legal guardians of great corporate interests must outrank all who have gone before; if success in the

courts is the criterion, Aaron Burr must have first honors, for he never lost a case.

But if loftier considerations enter into the question of what constitutes a really great lawyer,—if it is right to demand something nobler than advocacy, something broader than commercial aptitude, something more influential than erudition and more enduring than success, —then it is proper to insist on personal character as one of the elements that determine the just rank of any member of the profession.

No man ever believed in his calling more thoroughly than Lincoln, and he had no patience with the much-mouthed charge that honesty was not compatible with its practice.

"Let no young man choosing the law for a calling yield to that popular belief," he wrote. *"If, in your judgment, you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the choosing of which you do, in advance, consent to be a knave."*

If the writer of those lines abated anything of his boyish integrity under the stress of the workaday duties of the law, his theories in regard

to its practice are neither interesting nor instructive. But if he lived them out and proved them practical, they are of the first importance, and they have a direct bearing upon his much-disputed place in the profession.

In either event, however, it is fair to test Lincoln the lawyer by his own standards; to inquire whether his conduct as a member of the bar conformed to the reputation which he earned as a clerk in Offutt's store; to compare his professional ethics with his private principles; to ascertain whether he compromised with his conscience in the interests of his clients, and to judge his legal career accordingly.

V

LINCOLN'S FIRST ARGUMENT AND HIS EARLY ATTITUDE TOWARD THE LAW

LINCOLN never sought to make himself a general favorite, and yet he had not been long in New Salem before he was the most popular man in the town. Doubtless he possessed, even in those early years, that power of personal magnetism which he afterward exerted so commandingly in the courts and upon all sorts and conditions of men. But it is not necessary to insist upon this to explain his immediate favor with the New Salemites. He could tell a good story, make a creditable stump-speech, give an excellent account of himself in contests of strength, and hold his own against all comers in the daily debates at the village forum. Moreover, he listened attentively when other people talked, never boasted of his physical prowess, and was tolerant of all intelligent opinion. His extreme

popularity with men of his own age is particularly remarkable, however, when we remember that he neither drank nor smoked; for young men are apt to regard the use of tobacco and stimulants as essential to good-fellowship and manly camaraderie, and this was especially true of the settler days. Lincoln was not, however, a total abstainer in any strict sense of the words. He did not drink intoxicants because he did not like them, and he did not smoke for a similar reason. Judge Douglass once undertook to ridicule him on this subject.

"What! Are you a temperance man?" he inquired sneeringly.

"No," drawled Lincoln, with a smile, "I'm not a temperance man, but I'm temperate in this, to wit,—I don't drink."[1]

With his elders the young storekeeper found favor for a variety of reasons. They soon discovered that he knew more than any of them, but never presumed upon it; that he was genial and obliging, always ready to lend a hand at

[1] This conversation occurred in the presence of Judge Lawrence Weldon, who repeated it in an interview with the writer. Judge Weldon was the last surviving lawyer who traveled the circuit with Lincoln. [See Foreword.] He died in the spring of 1905, after a long and useful career on the bench of the United States Court of Claims in Washington.

From a photograph by Rice

Judge Lawrence Weldon

anything, from roofing a barn to rocking a baby; and that he was as reliable in business matters as he was in neighborly deeds and kindnesses.

But perhaps his most winning quality with young and old alike was his sincere belief in his fellow-townsmen and their community. Local pride never had a more buoyant champion than he. For him Sangamon County in general and New Salem in particular, was the promised land, and he was confident that the people were equal to the task of developing it according to its needs. Thus when it was first suggested that the shallow, snag-bound Sangamon River was navigable and might be made a great highway of commerce, he eagerly championed the theory and worked with voice, pen, and hand to realize a practical result. The Sangamon is still unnavigable and New Salem has disappeared, but Lincoln's plea for improving the waterway remains as evidence of his sincere belief in the future of the community and to show us what he could do with a weak cause at the age of twenty-one.

The argument is not remarkable, but it is exceedingly interesting and suggestive. Although he was young and boyishly enthusiastic, Lincoln did not overstate the possibilities nor underesti-

mate the difficulties of his case; and despite the really laughable attempt which was afterward made to force the passage of the Sangamon, there is nothing ludicrous in his plea. What he claimed sounds reasonable, and what he hoped for possible even in the face of failure.

This early effort plainly indicates Lincoln's natural aptitude for logical statement. But it does more than that. It displays a trait which few lawyers possess; for the ability to present facts clearly, concisely, and effectively without taking undue advantage of them is a rare legal quality. It requires not only ability but courage; not only tact, but character. It is one of the infallible tests which distinguish the legal bravo from the jurist, and it will be demonstrated in a future chapter that Lincoln fulfilled it in masterful fashion.

It was in a circular announcing himself a candidate for the State legislature that this Sangamon River argument appeared; for Lincoln, encouraged by the good will of his New Salem friends, had decided to make trial of his political fortunes. There was, therefore, a double temptation to indulge in extravagant promises and prophecies. He believed in his cause and he

wanted to please his constituents, and yet there is not a word of exaggeration in the entire address. It is quiet, frank, earnest, and simple.

This circular is important in the history of Lincoln's professional career not only because it contains his first argument, but also because it records his earliest public comment upon law. The evils of usury had been widely discussed throughout the State of Illinois for some time; and as there was a radical difference of opinion concerning the remedy, each candidate was expected to express his views upon the much-mooted question. Exorbitant interest was impoverishing borrowers, but it was feared that stringent laws might drive capital altogether out of the country and arrest its development. Lincoln announced himself as favoring a strict law on the subject, despite the objection that a high rate of interest might be preferable, in many cases, to no loan at all, and his answer to this has served to shock more than one of his biographers.

"In cases of extreme necessity," he wrote, "there could always be means found to cheat the law; while in all other cases it would have its intended effect. I would favor the passage of a law on this subject which might not be very easily

evaded. Let it be such that the labor and difficulty of evading it could only be justified in cases of greatest need."[1]

This temperate announcement seems very regrettable to certain estimable historians, who pull a long face and record their surprise at words which, as one of them puts it, "sound strange enough from a man who in later life showed so profound a reverence for law."

But the immature Lincoln was wiser and more broad-minded than his disapproving admirers. He knew that the enforcement of any law depends entirely upon public opinion, and he was not afraid to admit that evasions of the law were possible and, under certain circumstances, permissible. There was no sham or pretense or hide-bound reverence for law *as law* in his mental make-up. He believed in its spirit and not in its letter. It is the Shylocks and not the Lincolns who pose as the champions of statutes and demand their strict interpretation.

But the high-minded commentators who censure Lincoln's attitude in this matter might have found further evidence of youthful indiscretion

[1] The circular containing this statement and the Sangamon River argument was issued in March, 1832.

in this circular, where its author discusses the advisability of a proposed revision of all the State laws.

"Considering the great probability that the framers of those laws were wiser than myself," he naïvely remarks, "I should prefer not meddling with them unless they were attacked by others; in which case I should feel it both a privilege and a duty to take that stand which, in my view, might tend most to the advancement of justice."

Could not this be twisted into an assertion that he might, under certain circumstances, side with those who assailed the laws? A deplorably anarchical statement if law be superior to justice. But it is precisely because Lincoln never acted upon any such theory that his legal career is noteworthy and exceptional. He never surrendered his conscience to a code; his sense of justice was never cowed by the tyranny of "leading cases"; and the decision of the highest court in the world never succeeded in convincing him that wrong was right.

His attitude on this subject was fully explained a few years later, in an address delivered before the Young Men's Lyceum at Springfield,

when, after urging that reverence for the law should be "the political religion of the nation," he defined his position in these strangely prophetic words:

"But when I so pressingly urge a strict observance of all laws, let me not be understood as saying that there are no bad laws, or that grievances may not arise for the redress of which no legal provisions have been made. I mean to say no such thing. But I do mean to say that although bad laws, if they exist, should be repealed as soon as possible, still while they continue in force, for the sake of example, they should be religiously observed. In any case that may arise, *as, for instance, the promulgation of abolitionism,*[1] one of two propositions is necessarily true;—that is, the thing is right within itself and therefore deserves the protection of all law and all good citizens—or it is wrong and therefore proper to be prohibited by legal enactments; and in neither case is the interposition of mob law either necessary, justifiable, or excusable."

These wonderfully significant sentences were

[1] The italics are the author's. This speech was delivered January 27, 1837.

penned before Lincoln had reached his maturity, before he had actively entered on the practice of the law, before the Fugitive Slave Law was an issue, and long before the Dred Scott case was dreamed of.

We shall have occasion to see that his theories were tested in the most practical manner by the very situation which he invoked as illustration, and to note, in his professional attitude, a masterful distinction between bowing to legal authority and submitting tamely to its decrees.

VI

LINCOLN THE LAW STUDENT

THE quality of the talk which passed over the counters of Offutt's store was probably superior to the quality of its merchandise, for, despite the remarkable popularity of the salesman, the business dwindled until it finally "winked out," as Lincoln said of one of his later ventures.

At this crisis, however, an event occurred which set all the country talking, and the passing of the village emporium was scarcely noticed. Black Hawk, an Indian chief, was reported to be on the war-path, and the governor of the State hastily called for volunteers. Lincoln instantly responded, and was subsequently elected captain of his company—a success which, he declared, gave him more pleasure than any of the honors which afterward fell to his lot.

The so-called Black Hawk War lasted only a

few weeks. It was in many ways a ridiculous, if not contemptible affair, and Lincoln did not reach the front until it was virtually over. His company was disbanded shortly after it was formed, but he reënlisted as a private for the remainder of the campaign, and was finally mustered out by a young lieutenant of the regular army whom he was destined to meet again under more dramatic auspices—Major Robert Anderson, the commander of Fort Sumter.

It was characteristic of the man that at a time when military titles were the fashion Lincoln did not retain his, and never would permit any one to address him as captain. Indeed, years afterward, when congressmen attempted to make political capital for General Cass out of that gentleman's not too distinguished record in the War of 1812, he disposed of the pretensions with a laugh at his own military history.

"By the way, Mr. Speaker," he began with deep gravity, "did you know that I was a military hero? Yes, sir. In the days of the Black Hawk War I fought, bled, and came away. . . I was not at Stillman's defeat, but I was about as near to it as Cass was to Hull's surrender, and, like him, I saw the place very soon afterward. . . .

If General Cass went in advance of me in picking huckleberries, I guess I surpassed him in charges upon the wild onions. If he saw any live, fighting Indians, it was more than I did; but I had a good many bloody struggles with the mosquitos. Mr. Speaker, if I should ever conclude to doff whatever our Democratic friends may suppose there is of black-cockade Federalism about me, and thereupon they shall take me up as their candidate for the Presidency, I protest they shall not make fun of me, as they have of General Cass, by attempting to write me into a military hero."[1]

Farcical as this campaign was, it had, nevertheless, an important bearing on Lincoln's professional career; for it brought him to the notice of his future law partner, Major John T. Stuart, one of the Springfield volunteers, and it was the major's friendly advice and use of his small law library which encouraged the ex-clerk to pursue his legal studies.

The political canvass in Illinois was almost over when the "veteran" of the Black Hawk War returned to New Salem; but there was still time to make a few speeches in aid of his candi-

[1] Congressional Record of July 27, 1848.

dacy for the State legislature, and he threw himself into the contest with vigor and spirit. When the votes were counted, however, he found himself rejected—the first and only time he was ever defeated by direct popular vote.

But Lincoln had stated in the circular announcing his candidacy that if the people should see fit to keep him in the background, he was too familiar with disappointments to be very much chagrined, and there is no indication that he was particularly discouraged at the result, although it compelled him to seek immediate employment, and interfered to that extent with his preparation for the bar. He had to earn his living, but if he could find work which would allow him some leisure for study, he did not care much what it was and when a dissolute fellow named Berry, who had purchased an interest in a grocery-store, proposed a partnership, Offutt's ex-clerk grasped the opportunity.

A more ill-assorted couple than Berry and Lincoln it would be difficult to imagine but their ideas of the partnership were mutually satisfactory. The senior partner drank up all the profits of the business, and the junior member devoted himself to the study of law. As might be ex-

pected, this division of the labors and responsibilities of shopkeeping was not highly remunerative, and Lincoln afterward remarked that the best stroke of business he ever did in the grocery line was when he bought an old barrel from an immigrant for fifty cents and discovered under some rubbish at the bottom a complete set of Blackstone's Commentaries. That was a red-letter day in his life, and we have his own word for it that he literally devoured the volumes. They must, indeed, have been refreshing after the dry Indiana statutes; and if Lincoln's choice of a profession must be attributed to a law-book, no more plausible selection than Blackstone's Commentaries could possibly be made.

Berry & Lincoln virtually lived on their stock of merchandise, Berry drinking and Lincoln eating it up, and matters soon reached a crisis which drove the junior partner into the fields again, where he undertook all sorts of rough farm labor, from splitting rails to plowing. As a man-of-all-work, however, Lincoln did not prove altogether satisfactory to his employers. He was too fond of mounting stumps in the field and "practising polemics" on the other farm-hands, and there was something uncomfortable

about a plowman who read as he followed the team, no matter how straight his furrows ran. Such practices were irritating, if not presumptuous, and there is a well-known story about a farmer who found "the hired man" lying in a field beside the road, dressed in his not too immaculate farm clothes, with a book instead of a pitchfork in his hand.

"What are you reading?" inquired the old gentleman.

"I'm not reading; I'm studying," answered Lincoln, his wonderful eyes still on the pages of his book.

"Studying what?"

"Law, sir."

The old man stared at the speaker for a moment in utter amazement.

"Great—God—Almighty!" he muttered as he passed on, shaking his head.

But even with odd jobs and the postmastership of New Salem,[1] Lincoln could scarcely make ends meet, and he was glad to receive the appointment of deputy to Calhoun, the county

[1] This appointment, "too insignificant to make politics an objection," was received in May, 1838, from the Jackson administration, and it was the only Federal patronage which Lincoln ever enjoyed.

surveyor. He was sorely in need of the salary, but he would not accept the office under any misunderstanding. With characteristic frankness he admitted that he knew nothing about surveying, and explained that he was not of his employer's political faith. Being assured, however, that his politics made no difference, he applied himself to the study of surveying, and so well did he qualify himself for the work that none of his surveys was ever questioned, and the information he acquired stood him in good stead when he came to practice law. One of his legal opinions on a question of surveying is in existence to-day.

Meanwhile what remained of the grocery business was sold on credit. The purchasers defaulted, and Berry died, leaving his partner to shoulder all the not inconsiderable debts.

Credit in those days was freely extended, and it was not considered dishonorable to evade the payment of claims which passed into the hands of speculators. Berry & Lincoln had obtained very little when they purchased the grocery, and the sellers probably parted with the firm's notes for a small fraction of their face value. The men who bought paper of that sort usually sold it again at the first opportunity or traded it

The 11th Section of the act of Congress, approved Feb. 11, 1805, prescribing rules for the subdivision of Sections of land within the United States system of Surveys, standing unrepealed, in my opinion, is binding on the respective purchasers of different parts of the same Section, and furnishes the true rule for Surveyors in establishing lines between them— That law, being in force at the time each became a purchaser, becomes a constituent of the purchase—

And, by that law, I think the true rule for dividing into quarters, any interior Section, or Section which is not fractional, is to run straight lines through the Section from the opposite quarter section corners, fixing the point where such straight lines cross, or intersect each other, as the middle, or center of the Section—

Nearly, perhaps quite, all the original survey, as to some extent, moreor, and in some of the Sections, greatly so— In such the latter, it is obvious that a more equitable mode of division than the above, might be adopted; but as error is infinitely various, perhaps no better single rule can be prescribed.

At all events I think the above has been prescribed by the competent authority—

Springfield, Jany. 6. 1859. A. Lincoln.

A legal opinion from Lincoln on a question of surveying

off for something else, and thus it passed from hand to hand until some speculator who had obtained it for nothing or next to nothing appeared and demanded the uttermost farthing. Naturally, this dubious business encouraged evasion of the debts, and public opinion countenanced the repudiations. But to Lincoln a promise was a promise, and although the action of one of the parties who had acquired his and Berry's notes was particularly contemptible, he stooped to neither compromise nor evasion. Little by little he reduced the claims, and fourteen years afterward he devoted part of his salary as congressman to this purpose, and finally extinguished what he jestingly termed his "national debt."

In these days, when lawyers of high standing lend themselves to the thousand and one trickeries by which bankruptcy has become a new way to pay old debts, when influential firms accept retainers from insolvent clients who retain their memberships in fashionable clubs, and managing clerks are encouraged to make "affidavits of merit" on behalf of such gentry, it is refreshing to think of the struggling Illinois law student who refused to take advantage of the law.

This episode would be of merely passing interest did it not foreshadow Lincoln's conduct when face to face with the countless temptations and sophistries of the profession. It is important solely because it is illustrative and characteristic of his entire legal career, and it will be seen that he never consented to do anything in a representative capacity which he would not countenance in himself as an individual, that he maintained the ideals of advocacy in his daily contact with the legal world, and made no sacrifice of private principles in his long and active experience. In a word, he proved the ideals of his profession to be practical. Had he no other claim to recognition, that service alone should entitle him to the thanks of every honest member of his profession, and to far higher standing than that assigned to many acknowledged leaders of the bar. It will be demonstrated, however, that honor and integrity were not the only rare legal qualities which distinguished Lincoln the lawyer in his three-and-twenty years of practice.

VII

ADMISSION TO THE BAR. THE PRIMITIVE BENCH AND BAR OF ILLINOIS

HIS duties as surveyor carried Lincoln to all parts of Sangamon County and widened his acquaintance until, in 1834, he felt himself strong enough to make another canvass for the legislature. This time he was successful beyond his hopes, securing more votes than any other candidate save one; and some idea of the esteem in which his neighbors held him may be gathered from the result in New Salem, where he received 208 out of the 211 ballots cast, a tribute which proves that a man is sometimes a prophet even in his own country.

The duties of a State legislator in those days were even less confining than they are now, and although the remuneration was small, it enabled Lincoln to drop his surveying work and devote

his entire leisure to the law. He had already begun to practise in an apprentice way, occasionally drawing deeds and bills of sale for his neighbors and "pettifogging" before Justice Bowling Green; and biographers, better acquainted with literary values than with law, have seized upon the fact that he was not paid for this work to illustrate his generosity and helpfulness. One of the recent histories states that, "poor as he was, he never accepted a fee for such services, because he felt that he was fully paid by the experience."

Probably it more than paid him, but in view of the Illinois law which imposes a heavy penalty on unlicensed persons who accept compensation for attorney work, and in the light of similar provisions in the Indiana Revised Statutes, which Lincoln is supposed to have memorized, chapter, page and verse, the attempt to praise his forbearance makes a ludicrous virtue of necessity.[1] Lincoln, it will be remembered, protested that no pseudo-partizans of his should ever make fun of

1 The Indiana statute forbidding unlicensed persons to practise law under penalties is contained in the Revision of 1824, under chap. viii, sec. 9, and in the Revision of '31, on p. 86.

The Illinois law, in substantially the same language used in the Indiana statute, is set forth in the Revision of 1833, at p. 102, and in the Revision of '45, in chap. xi, sec. 11, p. 74.

him by trying to write him into a *military* hero; but he could not protect himself on every side, and his friends, the eulogists, have certainly done their best to make him ridiculous.

At the next election the young law student was again a candidate for the legislature, and his friends were so anxious for his success that they raised two hundred dollars to defray the expenses of a thorough canvass. He was triumphantly elected at the head of the poll, and returned one hundred and ninety-nine dollars and twenty-five cents of the campaign fund, stating to the subscribers that his total outlay had been only seventy-five cents. His plurality at this election was even more a personal tribute than the vote of the previous year, for his services during his first term in the legislature had not been remarkable. Indeed, there is nothing particularly noteworthy in his legislative record from beginning to end, except as it illustrates his growing political sagacity and genius for leadership.

It was at the close of his second term in March, 1837, that he moved to Springfield. He was then in his twenty-ninth year, vigorous in body, serious-minded, and developing intellectually with every fresh mental impulse. He arrived at

the new State capital[1] without money and with no baggage to speak of, but soon found himself among friends. Joshua Speed, a prosperous merchant, offered to share his lodging with the embryo lawyer, and was promptly taken at his word.

This arrangement was merely temporary, for a few days later Major Stuart, in whose office Lincoln had served an informal legal apprenticeship, offered him a partnership, and the firm of Stuart & Lincoln entered on the practice of law, the junior partner, for a time, literally living in the office.

It is improbable that Lincoln was obliged to pass any examination for admission to the bar. Certainly there is no record of any such formality, and the existing statutes did not, in express terms, provide for it. There was, however, a provision which permitted attorneys *from other States* to be licensed *without examination,* which suggests that *native* candidates may have been subjected to some sort of mental test[2]. Certainly ten or fifteen years later, Lincoln himself

[1] Vandalia was the former capital. It was changed to Springfield largely through Lincoln's efforts.

[2] Rule XXX of the Illinois Supreme Court, adopted March 1, 1841, about five years after Lincoln was admitted, provided that all applicants for a license to practise law be required to present

was appointed by the court to examine applicants; but the requirements, even at that date, were not very severe, and about the most important question which a novitiate had to answer was what he proposed to do for the bar in the way of an initiatory "treat," and this took every form, from a dinner to drinks all around.[1]

The date of Lincoln's admission to the bar has been so frequently misstated that it may be well to give the record in full. It is contained in Record C of the Circuit Court of Sangamon County, on page 173, where, under the date of March 24, 1836, the Hon. Stephen T. Logan presiding, "it is ordered by the court that it be certified that Abraham Lincoln is a person of good moral character," and the clerk's minutes of the same term of court contain the following entry: "Ordered that it be certified to all whom it may concern that Abraham Lincoln is a man

themselves in person for examination in open court. At the July term of the same year, however, this rule was bitterly attacked by old Judge Ford, who did not believe in restricting the membership of the bar, and the rule above quoted was rescinded, despite the objections of Justices Treat and Douglas, who recorded their dissent from the order of rescission.

[1] Judge R. M. Benjamin, of Bloomington, Illinois, is probably the only lawyer now living whom Lincoln examined for admission to the bar. In an interview with the writer the judge described the proceedings as being extremely informal, but stated that Mr. Lincoln did not suggest to him any "initiation."

of good moral character."[1] His name, however, does not appear on the roll of attorneys until September 9, 1836, and this was not published in the reports until March, 1837, which has led to much confusion, and conflicting statements in the biographies. There is no doubt, however, that he was legally qualified on March 24, 1836, and his professional life properly dates from that day.

Illinois was only just emerging from the condition of a frontier State in 1836, and all departments of the government were still very simply administered. The judges were, in some respects, superior to their brethren of Indiana, but they were not overburdened with learning, and although Governor Ford's "History of Early Illinois" records the names of half a dozen attorneys of reputed ability and scholarship, it is doubtful if the rank and file of the primitive bar

[1] Such orders were usually made on the recommendation of one or more persons, who signed a paper certifying to the court that the applicant was of good moral character. If this was done in Lincoln's case, it would be interesting to know who signed his certificate; but after an exhaustive search in the Circuit and Supreme Court records in Springfield the writer has been unable to find any of the original papers touching Lincoln's admission to the bar; and, from the neglected condition of other documents in these courts of about the same date, he is of the opinion that these historical papers have been lost or destroyed.

knew much more law than laymen of equal intelligence.

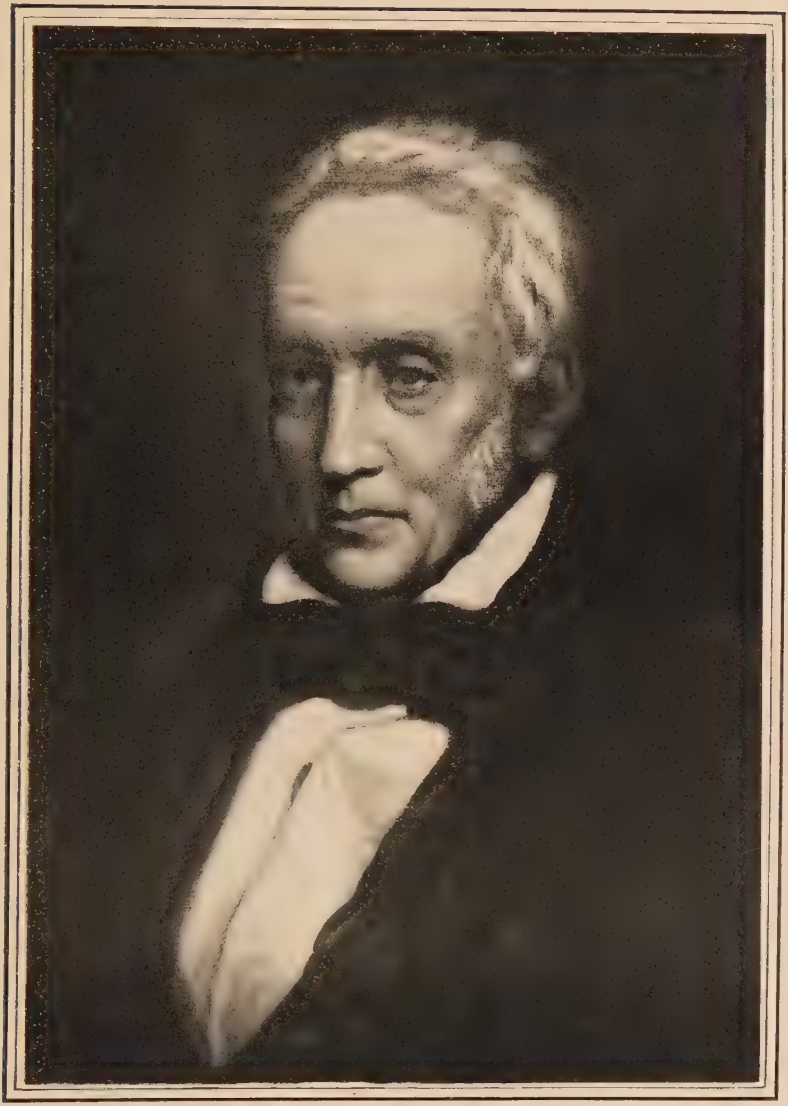
Most of the Illinois court-houses were log-built, as in Indiana, but in some districts the sessions were held in the bar-rooms of taverns, and the absence of all formality in the proceedings is best illustrated by the fact that in the Circuit Court of Washington County, held by Judge John Reynolds, the sheriff usually heralded his Honor by singing out: "Come in, boys! Our John is a-goin' to hold court!" to which cordial invitation those having business with the law responded.

Another sheriff in Union County made a laudable efforts to meet the requirements of the occasion by shouting this singular announcement:

"O, yes! O, yes! O, yes! The honorable judge is now opened!"

Both the bench and the bar had become comparatively dignified by the time Lincoln was admitted to practise; but Governor Ford, writing at a much later day, expressed a fine scorn of all formalities, and his comments indicate that the Illinois courts were not offensively ceremonious even in the fifties.

"In some countries," he complacently observes,



From a portrait owned by the Illinois Historical Society

Judge John Reynolds

A typical judge of the primitive Illinois courts

"the people are so ignorant or stupid that they have to be humbugged into a respect for the institutions and tribunals of the State. The judges and lawyers wear robes and gowns and wigs, and appear with all 'the excellent gravity' described by Lord Coke. Wherever means like these are really necessary to give authority to government, it would seem that the bulk of the people must be in a semi-barbarous state at least."

There was certainly nothing barbarous about the administration of the criminal law in Illinois before that State became what we call civilized. Indeed, the judges were humane to a fault, and whenever it became necessary for them to sentence a prisoner, they were careful to state that they were but the humble agencies of justice. Possibly this extreme modesty reflected a wholesome self-depreciation, but there is just a chance that it evidenced a live regard for their own personal safety. In any event, it is a fact that the judiciary assumed no unnecessary responsibility. In the case of the People *vs.* Green the jury convicted the defendant of murder, and the learned judge,—later a governor of the State,—was obliged to pronounce the death-sentence.

"Mr. Green," he began, addressing the prisoner, "*the jury* in their verdict say you are guilty of murder, and *the law* says you are to be hung. Now I want you and all your friends down on Indian Creek to know that it is not I who condemn you, but the jury and the law. Mr. Green, the law allows you time for preparation, so the Court wants to know what time you would like to be hung."

The prisoner "allowed" it made no difference to him, but his Honor did not appreciate this freedom of action.

"Mr. Green, you must know it is a very serious matter to be hung," he protested uneasily. "You 'd better take all the time you can get. The Court will give you until this day four weeks," he added tentatively.

The prisoner made no response, but Mr. James Turney, the prosecutor, apparently thinking the scene lacked impressiveness, rose and addressed the bench.

"May it please the court," he began, "on solemn occasions like the present it is usual for the Court to pronounce formal sentence, in which the leading features of the crime shall be brought to the recollection of the prisoner, and a sense of

guilt impressed upon his conscience, and in which he shall be duly exhorted to repentance and warned against the judgment in a world to come."

"Oh, Mr. Turney," the judge interrupted testily, "Mr. Green understands the whole matter as well as if I had preached to him a month. He knows he 's got to be hung this day four weeks. You understand it that way, Mr. Green, don't you?" he added, appealing to the prisoner.

"Mr." Green nodded, and the court adjourned.

Now it may be that this cautious magistrate had too much consideration for the prisoner's sensitive friends on Indian Creek, but our modern jurists, who admittedly have the courage of their convictions, might take a useful hint from his reticence, for if criminals derive any benefit from judicial lectures or warnings, the evidence of that fact has not yet been forthcoming.

But the pioneer judges were prudent in civil as well as in criminal cases. They never instructed the jurors on the legal effect of testimony, and rarely told them what they could or could not find from the facts. Occasionally, however, some Solon, bolder than his fellows,

would depart from this noncommittal practice, with results not always satisfactory. In one case a judge who desired to display his learning instructed the jury very fully, laying down the law with didactic authority; but the jurors, after deliberating some hours, were unable to agree. Finally the foreman rose and asked for additional instructions.

"Judge, this 'ere is the difficulty," he explained. "The jury want to know if that thar what you told us was r'al'y the law, *or on'y jist your notion.*"

These frontier proceedings were undoubtedly crude, but they reflected the common sense of the people, and it is fairly debatable whether the modern practice displays any marked advantage over the primitive methods. Certainly every legal appeal of to-day echoes the foreman's question, and only too frequently the highest tribunals inform us, after years of waiting, that what we received from the court below was not really the law, but "on'y jist the notion" of a trial judge.

Picturesque as was this old régime, and practical as it was for pioneer conditions, it speedily yielded to the march of progress, and when Lin-

coln joined the ranks of the profession it had virtually disappeared. Already the log court-houses had given way to frame-buildings[1] and structures of brick, and the steadily increasing immigration was bringing legal talent of a higher order than the State had ever known. A new generation of judges and lawyers was soon to control the administration of justice, and before many years the local bar of Springfield was to produce jurists and statesmen of national repute.

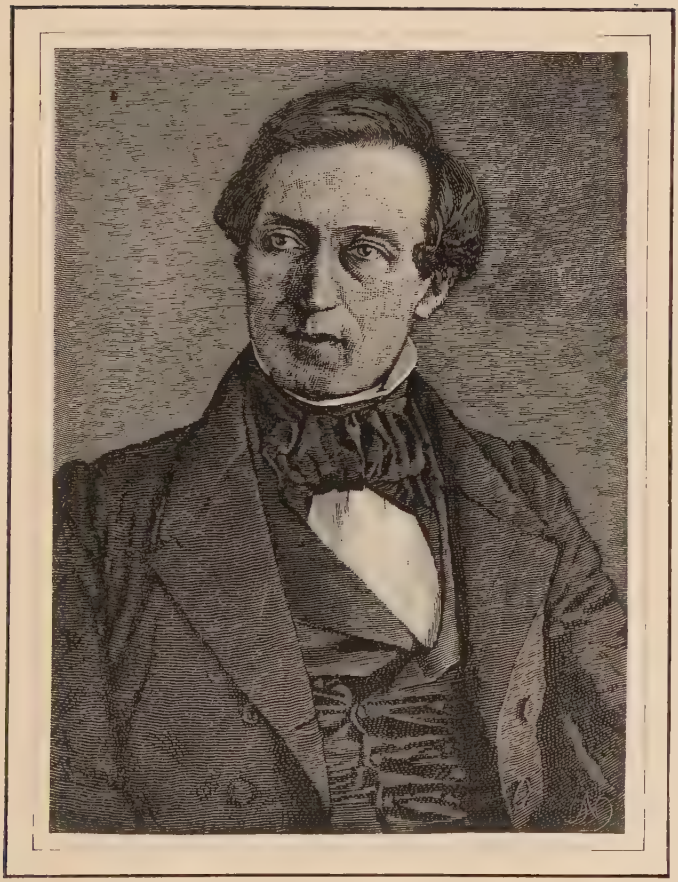
[1] It has frequently been stated that Lincoln practised in some of the old log court-houses, but from his personal investigations in the judicial districts about Springfield, the writer is of the opinion that all the courts which Lincoln attended during his early practice were housed in comparatively modern buildings.

VIII

LINCOLN'S FIRST PARTNERSHIP

MAJOR STUART, with whom Lincoln had joined forces, was not, in his early years, a well-read or even an industrious lawyer, but he was popular and had an extensive, if not very lucrative, practice, which he was entirely willing to intrust to his new associate. Indeed when the firm was formed he was so deeply engrossed in politics that he gave little or no attention to the law, and Lincoln had to assume virtually all responsibility for the business.

Of course, if the procedure had been complicated or technical, a novice would have speedily come to grief; but the character of litigation was very simple in those days, the precedents were few and far between, and the local forms exceeding elastic. Lincoln met such difficulties as there were in his own way, asking as little advice as possible and exercising his ingenuity to bridge



Hon. John T. Stuart

the gaps in his information when his partner was not available for consultation. The habit of standing on his own feet and doing his own thinking, which was thus forced upon him at the very outset of his practice, became his most notable trait. One of his contemporaries closely in touch with his professional life testifies that he never asked another lawyer's advice on any subject whatsoever. He listened to his associates and consulted with them, but he worked out his own problems, and there was never anything of the "brain-tapper" about his relations with the bar.

The influence of this early training is plainly discernible in the remarkable self-reliance and resourcefulness which he exhibited in his later years. New questions did not confuse him; he faced emergencies with perfect serenity, and he had long been accustomed to responsibility when he was called upon to decide questions of national import.

Springfield, the new capital of Illinois, was a mere village when Stuart & Lincoln hung out their shingle. The state-house had not been built, the sessions of the legislature were held in a church, and the houses were scattered

and poorly constructed. The business centered around a vacant plot of ground which passed for

Office of Stuart & Lincoln as it is to-day[1]

a public square, and many of the lawyers' offices were "in their hats."

Lincoln's partner, however, was a person of

[1] This is No. 109 North Fifth street, the only surviving section of the old "Hoffman Row," on the second floor of which Stuart & Lincoln had their office. According to tradition, this is that part occupied by the law firm. The section adjoining on the north was recently torn down to make room for a modern structure.

some importance in the community, and his office was situated in Hoffman's Row, over what was then the county court-house. Compared with the luxury and convenience of modern law-chambers, the appointments of this office seem somewhat meager. The furniture consisted of a roughly-made table, a few chairs, a lounge, a bench, and an old wood-stove, and the library comprised five Illinois Reports and about twenty volumes of miscellaneous law-books, legislative reports, and congressional documents, arranged on clumsy board shelves nailed to the bare walls. Inadequate as this equipment may appear, it was superior to that of the average country practitioner. Indeed, Mr. Conkling, in his legal reminiscences of Chicago, states that there were not at that time half a dozen law libraries in the city which could boast a hundred volumes, and that the Revised Statutes, the Illinois Form-book, and a few elementary treatises constituted the usual legal outfit.

In this small, bare, and uninviting office Lincoln passed much of his time for the next few years, working there by day and sometimes remaining for the night, sleeping on the crazy old

lounge, covered with a buffalo robe. Fortunately for him, there was no necessity for such en-

Springfield. Dec. 2. 1858.

James. T. Thornton, Esq

Dear Sir

Yours of the 29th written on behalf of Mr. John M. Mildrew is received. I am absent so much together too much to be a suitable instructor for a law student. When a man has reached the age that Mr. Mildrew has, and has already been doing for himself, my judgment is, that he had as the books for himself without an instructor. That is precisely the way I came to the law. Let Mr. Mildrew read Blackstone's Commentaries, Chitty's Pleadings, Greenleaf's Evidence, Story's Equity, and Story's Equity Pleading, get a license, and go to the practice, and still keep reading. That is my judgment of the cheapest, quickest, and best way for Mr. Mildrew to make a lawyer of himself.

Yours truly

A. Lincoln

From collection of John W. Thornton, Esq.

Letter written by Lincoln concerning preparation for the bar

grossing desk-work as is now required of ambitious attorneys; but there was more dull, clerical routine than falls to the lot of the average practitioner of to-day. All legal papers had to

be written out in long-hand, and as there were no duplicating-machines, every additional copy meant considerable manual labor, and most of this drudgery fell upon the junior partner. He not only drew the papers, but he kept the books of the firm, and while Stuart was in Congress he tried almost all the cases.

That he had virtually no legal precedents to guide him was distinctly an advantage. In these days of encyclopedias and digests, a man who enters upon the study of law with a creative mind, capable of logical deductions and close reasoning, is apt to become "case-ridden" before he has fairly started on his practice. Many modern students unconsciously surrender their judgment to the guidance of the court of last resort. Their sense of justice sways with the prevailing opinion; they cease to reason, and merely parrot the latest decisions.

Lincoln was subjected to no such stunting influences. He reasoned out new propositions with an unbiased mind, not with the idea of agreeing or disagreeing with the previously expressed conclusions of some other intellect, but to get at the truth of the matter; and it was doubtless this training which enabled him at a

later period to state political issues with more originality and clearness than any other speaker of his day.

There is a story to the effect that when he argued his first appeal before the Supreme Court at Springfield, he announced that all the adjudications he had been able to find were against his contention, and he would, therefore, merely read the decisions he had collated and submit the matter to the court.[1]

If this story be true, it is certainly fortunate that legal precedents were rare in Illinois, otherwise Lincoln might have been browbeaten by authority, as are some of our case-lawyers of to-day. The anecdote is not authenticated, however, and it is probably apocryphal. Even if the young advocate had been doubtful of his cause, he never would have meekly read it out of court with adverse decisions. As a matter of self-interest, he would have made the best possible argument; for the public was largely represented at all judicial hearings, and it was highly important for a beginner to make a good impression on the assembled audience. He was far too

[1] Lincoln's first case in the Supreme Court was Scammon *v.* Cline, reported in 3 Illinois, 456; and as he had won in the lower court, he had no reason to despair.

shrewd to have made an exhibition of himself by quoting decisions against his own client, and tamely submitting his cause to the court. Such a performance would have ruined a newcomer, for it would have been laughed at in every corner of his small community before the day was over. Lincoln, on the contrary, made a favorable impression from the start, and Springfield soon came to hold his legal ability in high esteem.

Although it was important for a young attorney to give a good account of himself in the public sessions of the courts, it was scarcely less essential that he should make himself felt in the rough-and-tumble debates at the general store or other headquarters of public opinion. The lawyer who waited for business to come to him in those days would never have built up a clientele. The village forums were the places where reputations were won or lost, and the man who made his mark there was soon sought as a legal champion. Lincoln more than held his own in these semi-public discussions and arguments, and it was not long before his advent was hailed with delight by the habitués of Speed's store, the most popular arena in Springfield.

But though his friends and neighbors recognized his ability and proclaimed it, his uncouth appearance was decidedly against him, and he not only failed to inspire strangers with confidence, but actually invited their derision and contempt.

Shortly after he became associated with Stuart, the latter sent him to try a case in McLean County for an Englishman named Baddeley, giving him a letter of introduction which advised the client that he could rely upon the bearer to try his case in the best possible manner.

Baddeley inspected his counsel's partner with amazement and chagrin. The young man was six feet four, awkward, ungainly and apparently shy. He was dressed in ill-fitting homespun clothes, the trousers a little too short, and the coat a trifle too large. He had the appearance "of a rustic on his first visit to the circus," and as the client gazed on him, his astonishment turned to indignation and rage. What did Stuart mean by sending a bumpkin of that sort to represent him? It was preposterous, insulting, and not to be endured.

Without attempting to conceal his disgust

Baddeley unceremoniously dispensed with Lincoln's services and straightway retained James A. McDougall, later a United States senator from California, to take charge of the case. History does not relate whether the irate Englishman won or lost the cause, but we know that he lived to become one of Lincoln's most ardent admirers.

This was not the last time Lincoln's personal appearance was to prejudice him in the practice of the law. Many years later, Stanton, then one of the leading lawyers in the country, was to snub "the long-armed creature from Illinois" who presumed to assist him in a celebrated case; and he also lived to revise his judgment and acknowledge the superiority of the man he flouted.

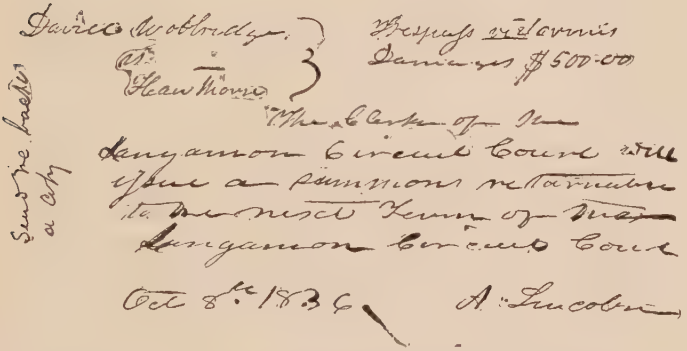
IX

HIS EARLY CASES AND COMPETITORS.

THE record of Lincoln's practice with Stuart is very meagre and unsatisfactory. The first case with which his name was connected as an attorney was Hawthorne *v.* Woolridge, one of three cases growing out of the same matter which was being litigated in Stuart's office before Lincoln was admitted to the bar, and of which he apparently had charge during his apprenticeship.[1] The action, however, never came to trial, being settled out of court, and the papers indicate that it and the other cases with which it was con-

[1] The action was begun on July 1, 1836, and was discontinued on March 17, 1837. Every biography which mentions the subject states that Lincoln lost his first case, but this is a palpable error. Costs were imposed on his client by the order of discontinuance in one of the three actions, and against his opponent's clients in another, while in the third the costs were divided,—all of which was evidently part of the compromise by which the whole litigation was settled; but none of the cases was ever tried.

nected made much ado about nothing, a not uncommon feature of pioneer lawsuits. People carried their differences into the courts far more readily in those days than they do now, and petty actions for trespass, assault, and similar grievances filled the docket. The conduct of such cases did not require any very intimate



From Major Wm. H. Lambert's collection

"Præcipe" (in Lincoln's handwriting) in the case of Hawthorne *v.* Woolridge, which was Lincoln's so-called first case

knowledge of law; and as the advocates relied largely on fervid oratory to influence the juries, Lincoln had no trouble in meeting his opponents on even terms. Some of his early political speeches which have been preserved demonstrate that he was capable of providing flowery eloquence when occasion demanded it, and he must

have given the country jurors just the sort of talk they liked, for he was admittedly successful as a pleader.

Springfield instantly recognized him as a first-class stump-speaker, an irresistible mimic, and an inimitable raconteur, and it was not long before his humorous stories and dry, witty remarks began to pass from mouth to mouth; but he had been in practice fully a year before he demonstrated his qualities as a lawyer, and then it was discovered that this tolerant, good-natured attorney, though slow to wrath, was, when once aroused, a relentless enemy to the evil-doer.

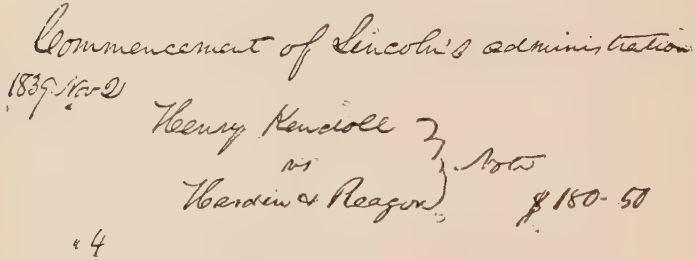
One James Adams, who called himself a general and posed as a lawyer, became a candidate for the office of probate justice in Springfield. At or about the same time a widow named Anderson discovered that some one had forged her husband's name to a deed of his real estate, and that the property to which she supposed she was entitled stood in the name of "General" Adams. At this stage of the proceedings she retained Stuart & Lincoln, and trouble began for the "general." Lincoln speedily made up his mind that this man was a scoundrel, and he

not only brought suit for the recovery of the widow's property, but camped on Adams's trail, attacking him with handbills, newspaper articles, and in the courts, and never resting until he unearthed a copy of a New York indictment charging him with another forgery, and describing him as "a person of evil name and fame and of wicked disposition." This put the "general" to flight; the woman won her suit and recovered the property, and Lincoln's services as a lawyer began to be in demand.

But though his cases were numerous, they were not very lucrative. Only two or three of the fees recorded in the firm's books for the year 1837 amount to $50, and most of the entries show $5 charged as trial fee. A chancery case under date 1837-8 shows a debit of $50, below which is written "credit by coat to Stuart, $15," making the net cash charge $35, which indicates that the firm sometimes "took it out in trade."

These modest retainers, however, do not by any means indicate that Stuart & Lincoln were unsuccessful or even in a small way of business. The firm ranked well in Springfield, and the capital was at that period second only to Chicago in importance in the State of Illinois. The

days of great retainers and vast fortunes accumulated in the practice of the law had not yet arrived, and the highest legal authorities in the land did not command very princely revenues. There is reason to believe that Daniel Webster's income from the practice of his profession did not average $10,000 a year, and often fell far short of it.



From General Alfred Orendorff's collection

Lincoln's jocose caption over an entry of Stuart & Lincoln's private docket

Lincoln never kept any private account-books, and the firm records are incomplete, so it is impossible to tell exactly what his early practice was worth in dollars and cents. At all events, it was sufficient, with his salary as State legislator, to enable him to pay his expenses and reduce his debts, and this was his only ambition in monetary matters.

In 1839, while Lincoln was attending the sessions of the legislature, a company of players "on tour" reached the city, and their adventures, as described by the late dean of the American stage, then a little lad of ten, give an excellent picture of the times.

Springfield being the capital of Illinois [writes Mr. Jefferson in his Autobiography], it was determined to devote the entire season to the entertainment of the members of the legislature. Having made money for several weeks previous to our arrival, the manager resolved to hire a lot and build a theater. The building of a theater in those days did not require the amount of capital that it does now. Folding opera-chairs were unknown. Gas was an occult mystery not yet acknowledged as a fact by the unscientific world of the West. The new theater was about ninety feet deep and about forty feet wide. No attempt was made at ornamentation; and as it was unpainted, the simple lines of architecture upon which it was constructed gave it the appearance of a large dry-goods box with a roof. I do not think my father nor Mr. McKenzie (his partner) had ever owned anything with a roof until now, so they were naturally proud of their possession.

In the midst of our rising fortunes a heavy blow fell upon us. A religious revival was in progress at the time, and the fathers of the church not only launched forth against us in their sermons, but by some political manœuver got the city to pass a new law enjoining a heavy license against our "unholy" calling. I forget the amount, but it was large enough to be prohibitory. Here was a terrible condition of affairs. All our available funds invested, the legislature in session, the town full of people, and we, by a heavy license, denied the privilege of opening the new theater.

In the midst of these troubles a young lawyer[1] called upon the manager. He had heard of the injustice and offered, if they would place the matter in his hands, to have the license taken off, declaring he only desired to see fair play, and he would accept no fee, whether he failed or succeeded. The young lawyer began his harangue. He handled the subject with tact, skill, and humor, tracing the history of the drama from the time when Thespis acted in a cart to the stage of to-day. He illustrated his speech with a number of anecdotes, and kept the council in a roar of laughter; his good-humor prevailed, and the exorbitant tax was taken off.

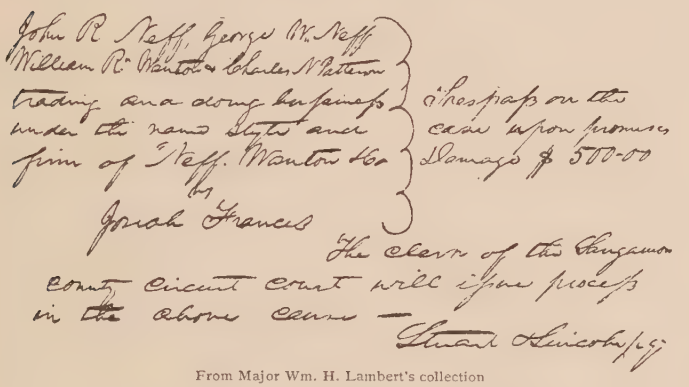
This young lawyer [continues Mr. Jefferson] was very popular in Springfield and was honored and beloved by all who knew him, and after the time of which I write he held a rather important position in the government of the United States. He now lies buried near Springfield, under a monument commemorating his greatness and his virtues—and his name was Abraham Lincoln.

There are many more or less authentic anecdotes concerning Lincoln's early practice, but neither the character of the litigation in which he was engaged nor its remuneration affords any fair criterion of his legal ability. He should be judged by the place he won for himself

[1] An examination of the old records of Springfield reveals the fact that Mr. Lincoln was at or about this time a member of the Board of Trustees of the town of Springfield and it is probable that he befriended the players in that capacity rather than as a lawyer. Mr. Isaac N. Phillips, official stenographer of the Illinois Supreme Court, first called the writer's attention to this fact which has heretofore escaped the attention of biographers.

among his contemporaries, and to estimate the value of that judgment it is necessary to know his competitors and what manner of men they were.

The newly settled States attracted immigration of a high order of intelligence, and Illinois was particularly fortunate in its new citizens.



From Major Wm. H. Lambert's collection

A legal document in Lincoln's handwriting, signed Stuart & Lincoln

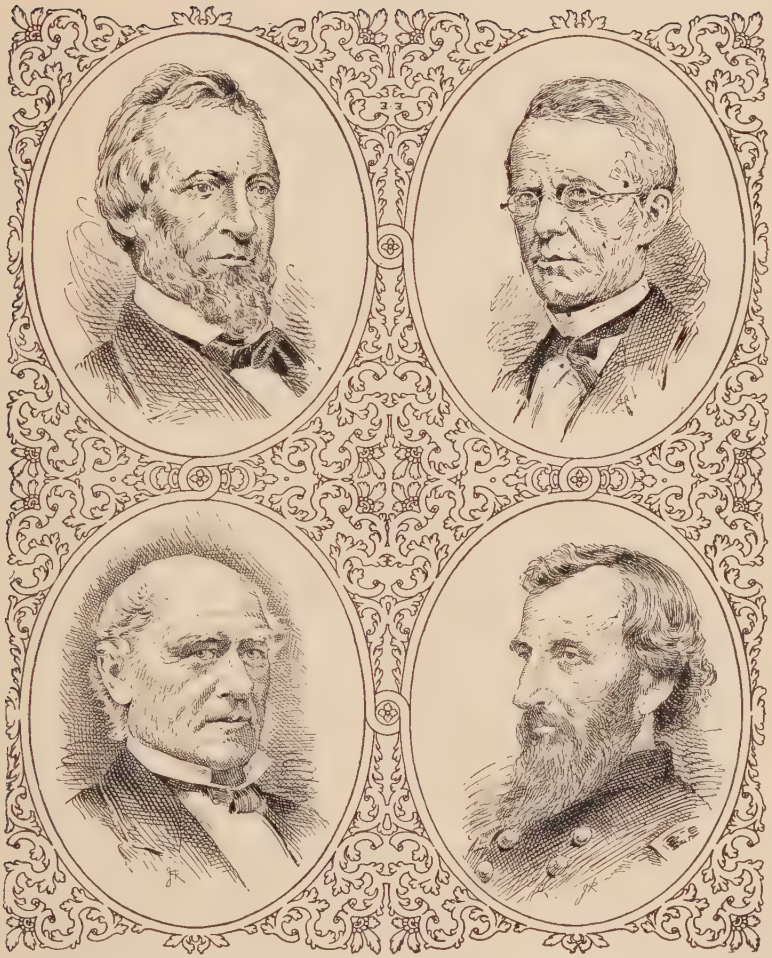
Young men came from the East and the South, Americans of energy, ambition, and strength, who rapidly adapted themselves to their new surroundings and became thoroughly identified with the local interests. Douglas,[1] Baker,

[1] In many of the legal documents in which Douglas appears as an attorney, his name is spelled with a double "s." This might be imputed to the error of copyists, but some of the papers examined by the writer were in Douglas's own handwriting, and one of them was an affidavit with the signature plainly showing the double "s." The law reports also spell his name in this way.

Logan, Edwards, McClernand, Stuart, Trumbull, McDougall, Browning, Hardin, Davis, Lincoln—every one of them came of English-speaking progenitors, and only one was foreign-born. These were some of the men with whom Lincoln associated almost from the outset of his practice, and many of them were already admitted to the bar when he joined the ranks of the profession. That they were a remarkably talented company does not admit of doubt.

Among the members of the backwoods legislature to which Lincoln was first elected were a future President of the United States, a future candidate for the Presidency, six future United States senators, eight future members of Congress, a future cabinet secretary, and no less than three future judges of the State, to say nothing of other men who distinguished themselves professionally in later years. Almost without exception, these men were lawyers, and Lincoln met and practised against them during

The careers of Douglas and Lincoln were strangely parallel. Both men were born to poverty and they were both self-educated. They were members of the same Illinois legislature, competitors in the same profession and before the same courts, rivals for the hand of the same woman, ran against each other for the United States senatorship, and were opposing candidates for the Presidency.



The Hon. James A. McDougall — The Hon. Lyman Trumbull

The Hon. O. H. Browning — Maj.-Gen. John A. McClernand

the three-and-twenty years of his professional life. To have held his own in such a brilliant coterie would certainly have been a creditable achievement, but it can be demonstrated that Lincoln not only held his own but, early in his career, became one of the leaders, if not the leader, of the Springfield bar. It may be urged, however, that most of his competitors were politicians, and not lawyers of marked ability, so it is proper to examine their records a little more minutely.

Stephen T. Logan, who came originally from Kentucky, was elected a judge of the Circuit Court, and is admitted to have been the best *nisi prius* (trial) lawyer in the State. He was undoubtedly the leader of the Illinois bar for many years.

Edward Dickenson Baker, the Illinois congressman, leader of the California bar, and the United States senator from Oregon, had a national reputation as an orator, and as a jury advocate he was second to none in Illinois as long as he practised in that State. He and Lincoln were pitted against each other in the courts term after term.

Stephen Arnold Douglas, a public prosecutor at twenty-two and a judge at twenty-eight, con-

gressman, United States senator, and candidate for the Presidency, has always been recognized as one of the ablest men of his day, and his seven years' career at the Illinois bar is scarcely paralleled for brilliancy in the legal annals of the United States. Certainly he and Lincoln were adversaries often enough to leave no doubt as to which had the better legal mind.

James A. McDougall, who supplanted Lincoln in his case for the Englishman Baddeley, afterward became attorney-general for the State of Illinois and United States senator from California, and, despite his eccentricities, was unquestionably a lawyer of ability.

Lyman Trumbull, United States senator from Illinois, was distinguished at the bar long before he won political honors, and every writer with knowledge of those times includes him among the eminent practitioners, of his day; while David Davis, judge of the Eighth Illinois Circuit, United States senator, and associate justice of the Supreme Court of the United States at Washington, was, of course, a jurist of national repute.

Leaving the question of his relative standing in the profession at large for further considera-

tion, it is confidently submitted that Lincoln won a notable standing at the local bar, almost at the outset of his career, among contemporaries who were not only capable lawyers, but men of exceptional force and character. Indeed, it is exceedingly doubtful if the bar of any other state in the Union equaled that of the frontier state of Illinois in professional ability when Lincoln won his spurs.

X

LINCOLN THE MANAGING CLERK

WHEN Lincoln was postmaster of New Salem he used to tuck the letters inside his hat and deliver them whenever he happened to meet the persons to whom they were addressed. As this is a fair example of his business system, it may readily be imagined that the office of Stuart & Lincoln was not a model establishment, where there was a place for everything and everything in its place. And it was not. Indeed, as a managing clerk the junior partner would have been a hopeless failure, and as an attorney, in the technical sense of the term, he would never have distinguished himself. He disliked everything connected with the drudgery of legal routine, hated drawing the declarations and pleas, despised the artificialities and refinements which were even then beginning to creep

into the pleadings, and disregarded forms whenever it was possible to do so.

There was nothing mechanical, precise, or methodical about the man, and in all those housewifely virtues which characterize the careful, orderly, exact solicitor he was utterly deficient. He never knew where his papers were, and apparently the only attempt he ever made to better the disorder was to write on one of the bundles of papers which littered his desk, "When you can't find It anywhere else, look in this."[1] But that was long after the firm of Stuart & Lincoln had dissolved, and even then we find him explaining to a correspondent that he had placed his letter inside an old hat and had thus neglected answering it, which shows he had not wholly outgrown the habit of his post-office days. Indeed, his hat continued to be his favorite receptacle for papers as long as he lived, and he never acquired any sense of order.[2]

Fortunately for his peace of mind, Stuart had

[1] This memorandum is in existence to-day. It is owned by a Philadelphia law firm.

[2] Even on his journey to Washington he actually mislaid his inaugural address, and for a time it was feared that the contents of that jealously guarded document would become public property before Buchanan's term expired; but finally it was located, and no premature announcement of his policy was made.

no more system in business affairs than his associate, and the result of their lax methods was, of course, confusion worse confounded. Again and again we find Lincoln reporting to his partner in Washington that clients had called for deeds which could not be found, and that papers were wanted which had disappeared, and there is no proof that the Major was ever able to help in the search. In fact, neither man took even ordinary business precautions, and if either of them kept copies of letters, no evidence of that fact has yet been discovered. Certainly Lincoln's private correspondence was conducted in the loosest possible fashion. He would write on whatever happened to be handy, and his notes for law work or speeches were scribbled on the backs of envelopes, edges of newspapers, or other available material. Most of these memoranda found their way sooner or later into his capacious "stovepipe," and when any particular item was needed, the search which followed suggested the conjurer's hat trick.

Lincoln was too philosophic to be bored or irritated by the details or minutiæ of the profession. He simply ignored them. The argus-

eyed attorney, who sees that every "t" is crossed and that every "i" is dotted, doubtless fulfils a useful function in the practice of the law, but Lincoln was not a lawyer of this quality. Indeed, it must be conceded that in all such matters another distinguished President of legal antecedents decisively outranks him. Thomas Jefferson was a master of accounts and bookkeeping. He was the champion diarist of the world, the most methodical of statisticians, and the neatest, most precise "man of business" who ever tied papers with red tape and sealed them with green seals; and yet he will never be classed among the great lawyers of the nation. Fancy Jefferson or any other capable manager writing a client in this fashion and turning good business from the door:

"As to the real estate, we cannot attend to it. We are not real estate agents. We are lawyers. We recommend you to give the charge of it to Mr. Isaac S. Britton, a trustworthy man and one whom the Lord made on purpose for such business." [1]

Perhaps this letter displays poor commercial judgment, and doubtless it shocked and grieved the thrifty man with whom Lincoln was asso-

[1] See article by Jesse W. Weik, in *The Century* for June, 1904.

ciated when he wrote it, but it shows that he had his own ideas of the dignity of the profession and did not purpose to barter it.

Lincoln's mind was orderly, though his methods were not. He neglected details because his thought, which was "as direct as light," passed instantly to the vital spot, and all else seemed unimportant. "If I can free this case from technicalities and get it properly swung to the jury, I'll win it," he used to say; and this was his mental attitude toward all legal questions. He had no training in technicalities as long as the firm of Stuart & Lincoln lasted, and it is doubtful if any teaching would have qualified him for attorney work or made him a master of detail. Yet as an office lawyer—such as rules the destinies of our modern corporate interests—he probably would have been invaluable. His mind comprehended large subjects without the slightest effort. Once concentrated on an issue, he passed directly to the point, disregarded the thousand and one contingencies, all the academic pros and cons, and reduced the problem to its simplest possible form. The man who is constantly mindful of details is apt to attach too much importance to small things, and with such

a man compromises are difficult, if not impossible. Lincoln had no training of this sort to overcome, and the result is constantly apparent in all his important actions of later years.

It is not, of course, contended that his unmethodical habits and loose business training prove his legal aptitude, but it is submitted that they do not define his limitations as a lawyer. His natural perceptions were too keen, his mind too generously catholic, to admit of the discipline enforced by the usual legal training. Education of that sort would probably have warped his natural talents, and the result might have been a conscientious family solicitor instead of the great adviser of a nation. He needed the freedom of an office innocent of patent letter-files and card-catalogue indices to develop his individuality; he demanded the growing room of a new country where the practice of the law was not conventionalized out of all meaning and forms did not restrict; he required the self-discipline which comes of personal, unguided effort and unhandicapped competition; and he found the requisite conditions in his free-and-easy association with Major Stuart.

The independence and responsibility which he

experienced in this partnership allowed him to exercise and express his individuality at a time when stricter discipline and more technical teaching would have fretted him or molded his maturing mind in a different fashion. As it was, he developed naturally into a broad-minded counselor who reverenced the law without worshiping it, and whose sense of justice was not dulled by contact with unyielding precedents.

If Stuart had been ambitious to accumulate a fortune, he would have been disappointed with his partner; for, with a people as litigious as the early Illinois settlers, it was a simple matter to stir up strife and make work for the lawyer, and Lincoln, instead of egging clients into the courts, set his face against such practice.

"Discourage litigation," was his advice to lawyers. *"Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of becoming a good man. There will always be enough business. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who*

habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it."

It has been truly said that those words should be posted in every law office in the land, and it will be seen, when Lincoln's record is fully examined, that it was not a mere theorist who wrote them, but an active practitioner of wide experience who lived up to his own teaching.

XI

EARLY SUCCESS IN THE COURTS

LINCOLN had served four terms in the State legislature, and had once been a formidable candidate for speaker of that body, before his partnership with Stuart terminated. Doubtless he could have held the office indefinitely had he chosen to do so, but there was neither glory nor profit in the work at that particular period of Illinois history, and for the time being he had obtained all the legislative experience he required. Moreover, his ambition was beginning to take a wider range, and his name had been seriously mentioned for the governorship on more than one occasion. This and the fact of his contemplated marriage decided him to retire from politics and devote himself exclusively to the practice of his profession.

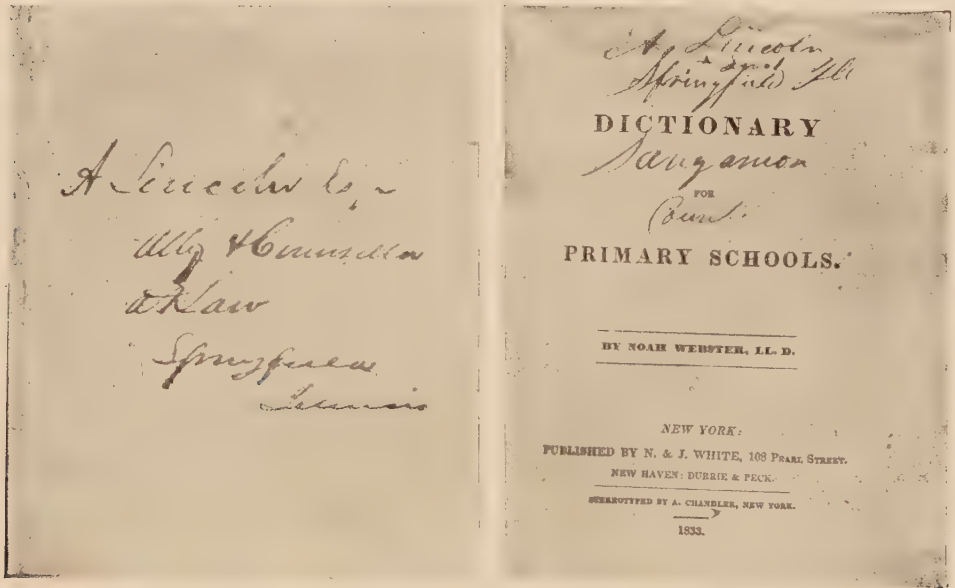
His four years' association with Stuart had

given him a fair start in the law, and he had enlarged his acquaintance and experience by traveling the circuit on every possible occasion. In those days lawyers in active practice spent a great part of their time following the local judges, on horseback or afoot, from one town to another, journeying in small parties, and stopping at the same taverns, like a company of players on the road. Some of the leaders, like Judge Logan, had cases to try in the various villages and towns on the route, but others picked up business on the way, and, from all accounts, the pickings must sometimes have been painfully lean, for Douglas's fees on one trip amounted only to five dollars, and his was an unusually magnetic personality. There was hardship and discomfort in this work, but even in those very early days, when the roads were almost impassable and the hotel accommodations belied the name, the life had its peculiar charms, for the members of the bar were persons of no little distinction in the eyes of the country villagers, and the advent of the nomadic court was the red-letter day of the country calendars.

Riding and tramping the circuit month after month brought Lincoln into close touch with

almost all the local members of his profession, and he took high rank among them almost from the start. The nature of his success at this early period is, however, a subject of much misapprehension. Most of the biographies give the impression that his associates appreciated him as an entertaining, unselfish companion, but did not consider him very seriously as a lawyer. But good nature, generosity, and unselfishness do not necessarily insure respect unless a man has the power to command it, and that power Lincoln most certainly possessed. There is a story that he used to be sent ahead as a scout when the rivers were swollen, to test the fords with his long legs, and doubtless it is true; but there is another story that he once interrupted a too personal debate as to the proper length for a man's legs by remarking, "I should think they ought to be long enough to reach from your body to the ground," a quiet retort which is said to have put some of the debaters in the air.

It was in the courts, however, that Lincoln's nature and disposition showed to best advantage, and it was there that he won his most enduring popularity and his first real recognition. Lawyers frequently refer to each other as brothers,



Owned by Major William H. Lambert

A "Dictionary for Primary Schools" with Lincoln's autograph

The double title as "Esquire" and also "Attorney" suggests that it was written in the first flush of professional pride

but there is very little real fraternity in the profession. The sharp, personal collisions inevitable in litigation bruise and jar the contestants, no matter how hardened they may be, and the man who emerges from the fray with no prejudice against his opponent and without having given the least offense possesses a remarkable temperament—and such a man was Abraham Lincoln. He knew how to try a case without making it a personal issue between counsel. He could utter effective replies without insulting his opponent, and during all his practice he never made an enemy in the ranks of the profession. No one but a lawyer can appreciate what this means; but it requires generosity, patience, tact, courtesy, firmness, courage, self-control, and a big-mindedness which few men possess. Yet, day after day and year after year, Lincoln met all sorts and conditions of lawyers at a time when they were all young, ambitious, and keen to succeed, without embittering any one or forfeiting his self-respect. Not many members of the profession can show an equal record; certainly none of the Springfield bar has left a similar reputation.

That Lincoln's experience in the courts

guided his conduct in the political arena and in the hard-fought field of statesmanship cannot reasonably be questioned. No public man in this country ever engaged in more heated controversies than he, none was ever subjected to such bitter taunts or suffered such provocation; yet after years of the fiercest political warfare and a duel of debate unsurpassed in the history of the world, his most zealous opponent was able to side with him in the hour of national peril, and when he took the oath of office as President of the United States, that same bitter rival, and unsuccessful candidate for the mighty office, stood by him and held his capacious hat. Nor was Douglas the only one of his competitors who harbored no resentment in the hour of defeat. Seward, the ambition of whose life was crushed when Lincoln was nominated, and who accepted office under the rail-splitter only "to save the country," had no cheap retorts to forget when he came to acknowledge his adversary as "the best man of us all"; and to-day the South can find no word of offense in all the utterances of the most tireless advocate of emancipation and the Union.

It may be claimed, however, that Lincoln's early reputation as a fair, clean practitioner does

not prove that he was regarded seriously as a lawyer when he first practised on the circuit, and of course it does not. But there is very positive proof of his professional recognition in the fact that when his association with Stuart ended, Stephen Logan, the leading lawyer of the circuit, if not of the State, a former judge, and one of the canniest business men at the bar, singled him out from all his contemporaries and offered him a partnership.

XII

A NOTABLE PARTNERSHIP

THE story of Lincoln's professional life might fairly be said to date from his association with Judge Logan; for although he had already seen four years of practice, his experience had been mainly preparatory, and whatever law he knew he had taught himself without competent guidance or control. His new partner, however, possessed not only a strong individuality, but also a positive genius for developing legal talents, and his example and instruction undoubtedly had an immediate and lasting influence upon Lincoln's subsequent career.

Stephen Trigg Logan was, like his partner, a native of Kentucky, but when he moved to Illinois he was thirty-two years of age and he had been Commonwealth Attorney in his own State for ten years before he opened an office in Springfield. Not only was he better equipped by education and training than most of the Illi-

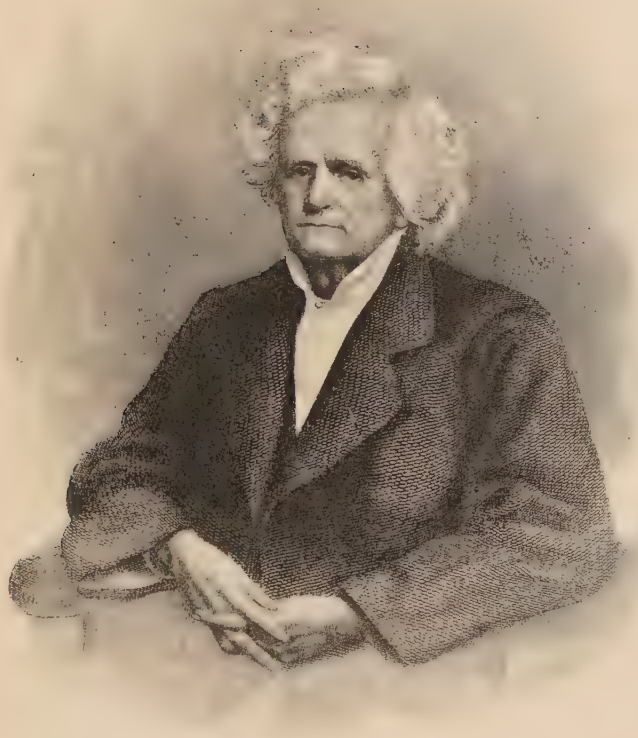
nois practitioners, but he was unusually well endowed by nature for the practice of his profession, and he speedily took high rank at the bar of Illinois. Indeed, such was his reputation for ability and learning that he was appointed judge of the Fifth Circuit less than three years after his arrival at Springfield; but the judicial salary—seven hundred and fifty dollars a year[1]—was wholly inadequate for a man of his caliber, and becoming restless under this pecuniary sacrifice, he resigned in 1837, after two years' service on the bench. His unquestioned leadership of the bar dates from this return to practice, and for many years afterward his sway was almost absolute. In the third volume of the Illinois Supreme Court Reports his name appears in connection with no less than twenty-six appeals—an unprecedented record for those times, showing that he was retained on one side or the other of almost every important matter in the courts.[2]

These facts demonstrate the extent and value

1 Laws of 1834-5, p. 167. Afterward the salary was raised to a thousand dollars.

2 A very complete biographical sketch of Judge Logan is contained in a volume, now out of print, entitled, "The Life and Character of Stephen T. Logan," published in Springfield, Illinois, in 1882.

of his practice, and there is every reason to believe he had the whole bar to choose from when he suggested a partnership to Lincoln in the spring of 1841. It could not have been for his social qualities that Logan chose his man, and he certainly could not have coveted the small personal clientage which Lincoln had secured during his apprentice years. Neither is it at all probable that he allowed any question of friendship to enter into his business calculations. Doubtless he liked the young man and found his company agreeable, but there was a strong mixture of Scotch blood in the judge's veins, and his eyes very rarely wandered from the main chance. He wanted an assistant capable of helping him with his steadily increasing legal work, and the explanation of his choice was obvious. He believed that Lincoln had in him the makings of an able lawyer, and he instinctively recognized promising legal material in the rough. No less than seven distinguished members of the bar and statesmen of repute—four United States senators and three governors of States—were developed in the same office in later years, and their careers testify to the powerful influence of



Stephen T. Logan

their preceptor and his faculty for discovering latent talent.

Logan's recognition of Lincoln's qualifications was not, however, wholly divination. His attention had been first attracted to the young man by a "very sensible speech" which he had delivered during his earliest political canvass, and when he was admitted to practice the judge was on the bench and doubtless heard his maiden efforts at the bar.[1] Later he frequently met him in practice on the circuit, and received the best possible proof of his legal aptitudes; for in the fourth volume of Illinois Reports we find him opposed to his future partner in at least three appeals from cases tried as early as 1839, and in all of them Lincoln was the victor. Moreover, one of these cases (Bailey *v.* Cromwell, 4 Ills., 71) involved an important principle, and was otherwise calculated to inspire each man to his very best effort, although neither could possibly have dreamed that it was to have a place in history as the first contest touching slavery in which the great Emancipator was engaged.

[1] Judge Logan made the order admitting Lincoln to the bar (Record of the Circuit Court, Sangamon County, p. 173), and he also signed the order discontinuing what is known as his first case.

This case grew out of a promisory note made by one Bailey to one Cromwell in payment of the purchase price of a negro girl named Nance. When the note matured the maker declined to pay it on the ground that Nance was not a slave, and the trial turned entirely upon this point. Lincoln was retained by Bailey, and a hot fight followed in which Lincoln was beaten; but he immediately appealed to the Supreme Court, which sustained his contention and, reversing the lower court, declared the girl free.[1]

Except in the matter of their legal qualities, however, the new associates were a strangely assorted pair. There was only nine years' difference in their ages, but Logan had been in practice for at least fifteen years when Lincoln was admitted to the bar; and, as all his powers were matured before Lincoln's began to develop, he appeared much older, and in temperament the two men were hopelessly apart. Logan was a

[1] On his brief in this case Lincoln cited 10 Johns., 198; 10 Wend., 384; 3 Caines, 325; Ordinance of Congress, Art. vi; R. L. 57; Gale's Stat., 44; Constitution of Ills., Art. vi; 14 Johns., 188; 2 Bibb., 238; 2 Salkeld, 666; which illustrates the extent of his available legal material at that period.

The writer finds that Bailey *v.* Cromwell has been cited by other judges in later cases, at least eighteen times.

formal, precise, technical attorney, who read Blackstone's Commentaries from beginning to end at least once every year until he was sixty, and whose shrewd, hard face and keen eyes bespoke the man of business. He was orderly and methodical in his habits, careful and painstaking in all matters of detail, highly moral "with an old-fashioned lawyer's sense of morality," industrious to a fault, ambitious to make money, and wholly absorbed in the practice of his profession. With such a man Abraham Lincoln, of course, had little in common; for he himself was easy-going, unsystematic, and without the slightest inclination for wealth. "Wealth," he observed, "is simply a superfluity of things we don't need," and his indifference to the commercial advantages of the legal profession must have amazed his associate, who never lost sight of them, and died a rich man. But though he did not care to make money, Lincoln was exceedingly ambitious to make a name for himself; and realizing his own shortcomings as a lawyer, he studied the methods of his experienced partner with the closest attention. Until he came under Logan's influence he had practised in the laziest

possible fashion, making virtually no preparation for his cases, and relying on his wits and the inspiration of the moment to carry the jury with him. It would have been impossible for any man to accomplish much by such methods, and Lincoln's mental process was particularly ill adapted for haphazard work. His mind acted slowly, and although he could make a quick reply upon occasion, he required time to do himself full justice either in the courts or on the platform. Whether Logan told him this in so many words, or whether he discovered it for himself, is of little moment, but it is certain that he soon began to adopt his partner's methods, studying his cases with the utmost care and diligently examining the law. This training immediately showed itself in his work.

Instead of being occasionally dangerous, he soon became a formidable opponent whenever he believed in a cause. He was too broad-minded for the blind partizanship of the average small attorney, and instinctively looked on both sides of each question; but it was doubtless Logan who showed him the tactical advantage of knowing his adversary's case as thoroughly as he knew his own, and, as a result, we have his own testimony

that in all his practice at the bar he was never once surprised by the strength of his opponent's cause, and often found it much weaker than he had hoped.

It is only necessary to recall a few episodes in Lincoln's public career to realize how this training served him in time of need. When Captain Wilkes stopped the *Trent* on the high seas and removed the Confederate envoys Mason and Slidell from the protection of the English flag, Lincoln was at first inclined to take the popular view of the matter; but he calmly weighed the angry protest of the mother-country, argued her case in his own mind, and not only saw that she was right, but also shrewdly noted the tactical advantage of submission, which he quietly pointed out in the most significant words.

"We must stick to American principles concerning the rights of neutrals," he remarked. "We fought Great Britain for insisting by theory and practice on the right to do precisely what Captain Wilkes has done. If Great Britain shall now protest against the act and demand Slidell and Mason, we must give them up and apologize for the act as a violation of our own

doctrines, *and thus forever bind her over to keep the peace in relation to neutrals and so acknowledge that she has been wrong for sixty years.*"

Again, it was his knowledge of his opponent's armor which made him the most dangerous debater of the slavery issue. Abolitionists ranted and rashly accused the Southerners of high crimes and misdemeanors of which they were wholly innocent. Lincoln learned the pro-slavery arguments, stated them fairly, analyzed them pitilessly, turned them against their sponsors, and convicted them out of their own mouths. It was this great legal trait, acquired and cultivated in Logan's office, that Douglas had in mind when he exclaimed that "Lincoln had given him more trouble than all the Abolitionists put together."

Logan did not succeed in teaching his young partner to be a technical lawyer, but he did undoubtedly show him the tactical value of procedure, and it will be seen in another chapter that he occasionally availed himself of this knowledge, although he never practised by rule of thumb. In the matter of strategy he needed no instruction, and his knowledge of human nature was vastly superior to Logan's. Moreover, the judge's sense of humor was somewhat deficient,

and Lincoln once took an amusing advantage of this when he was practising against him before a jury on the circuit. Logan was dignity itself on such occasions; but, orderly as he was in most matters, he seldom wore a necktie and was otherwise careless about his dress, and Lincoln, knowing his man, proceeded to unhorse him as soon as he addressed the jury.

"Gentlemen," he began, "you must be careful and not permit yourselves to be overborne by the eloquence of the counsel for the defense. Judge Logan, I know, is an effective lawyer. I have met him too often to doubt that; but shrewd and careful though he be, still, he *is* sometimes wrong. Since this trial began I have discovered that, with all his caution and fastidiousness, he has n't knowledge enough to put his shirt on right."

Logan turned crimson with embarrassment, and the jurors burst into a roar of laughter as they discovered that the discomfited advocate was wearing the garment in question with the plaited bosom behind, and for the rest of that trial Logan was not effective against his former partner.

XIII

JUDGE LOGAN AND LINCOLN

THE terms of Lincoln's partnership with Judge Logan are not known, but it may reasonably be inferred that the junior member of the firm received only a small percentage of the fees, for the business was almost entirely Logan's, and he was not by nature over-generous. Indeed, he had quarreled with his former partner, the brilliant orator Edward Dickenson Baker, on monetary matters; and it is probable that there were few members of the bar who would have been as tractable as Lincoln on the question of compensation. Certainly his style of living at that period indicated a very slender revenue, considering the standing of the firm; for even after his marriage with Miss Mary Todd, in November, 1842, he and his wife were not able to keep house, but lived at the Globe Tavern, where their room

and board cost only four dollars a week; and still later in the partnership he wrote that he could not accept an invitation to visit Kentucky "because he was so poor and made so little headway that he dropped back in a month of idleness as much as he gained in a year's sowing."

During all this time, however, the practice of the firm was steadily increasing and Logan was becoming rich; so it is fair to assume that Lincoln was not receiving the lion's share of the profits. It would have been surprising if business had not been prosperous, for the partners worked together in entire harmony, and Springfield was at that time the center of all things legal in Illinois. Not only were the United States courts located there, but the County Court, the Circuit Court, and the Supreme Court (the tribunal of last resort), and the State legislature likewise, held their sessions in the city, and the indications are that the firm reaped a rich harvest from all these fields of legal endeavor.

Success in the courts is not an infallible criterion of legal ability, but it is an interesting fact that Lincoln argued no less than fourteen appeals before the Supreme Court at the December term of 1841, and succeeded in all of

them but four, a record which was not surpassed even by Logan himself; and, between them, the partners well-nigh monopolized that court at the terms of 1842-3. In that period they argued twenty-four final appeals, and won all of them but seven, a fact which not only indicates the extent of their practice, but affords a fair inference of their success in other courts.[1]

Under the circumstances, it is not surprising that Lincoln gave little attention to politics during his partnership with Logan, though he did not altogether withdraw from public life. The mention of his name for the governorship in 1841 had been serious enough to call for a semi-official declination; but there was no organized effort made to induce him to accept the nomination, and the subject was dropped. Despite his close attention to business he was, nevertheless, more or less active in the councils of the Whig party during the first two years of his association with Logan, and in 1843 he became chairman of the local convention, drew the political platform and otherwise manifested keen

[1] Some of the records of the Illinois circuit courts have been destroyed by fire, but the writer frequently noted Lincoln's name in the judge's minutes, and found other indications that he was at this time doing his share of circuit work.

interest in party matters, at the same time becoming an active candidate for the congres-

Drawn by Harry Fenn from a photograph

The building in Springfield on the third floor of which was the office of Logan & Lincoln

sional nomination. His most formidable rival for this honor was Baker, Logan's former

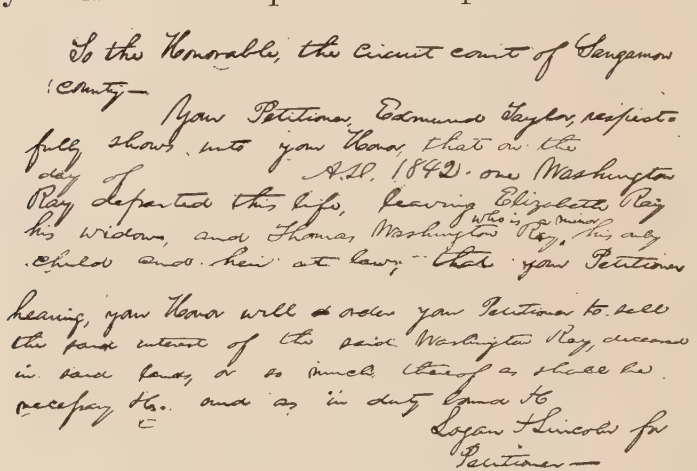
partner; but neither man was strong enough to carry the convention, and John J. Hardin, another prominent member of the bar, was named and elected. The following year Baker and Lincoln were again mentioned for the same office, but Lincoln refused to contest the place with his friend and fellow-member at the bar, who had long set his heart upon obtaining the prize, and to whom defeat would have brought great bitterness. Indeed, Baker's political ambitions were almost boundless, and in after years Judge Davis used to tell a story about him to the effect that when he first read the Constitution of the United States and discovered that no one but a native American could be President, he burst into tears, bewailing the fact that he was ineligible, having been born in England. Largely as a result of Lincoln's withdrawal, Baker received the coveted nomination, and was subsequently elected to Congress, afterward becoming the leader of the California bar and United States senator from Oregon. There was certainly a strange fatality about these early congressional contests, for each of the three friendly competitors died for his country in the order of his election—Hardin gal-

lantly leading his troops in a charge at the battle of Buena Vista in the Mexican War, Baker while commanding his regiment at the disastrous battle of Ball's Bluff in 1861, and Lincoln at the head of the nation.

There is reason to suppose that Logan, knowing his partner's deficiencies in the law, originally intended to utilize his talents as a jury advocate; but after Lincoln began to study in earnest, he developed other qualities which made him quite as effective with the court as he was with the jury, and the two men were thereafter constantly together in all sorts of legal work. "He would study out his case and make about as much of it as any one," Logan remarked, speaking of his partner many years afterward. "His ambition as a lawyer increased; he grew constantly. By close study of each case as it came up he got to be quite a formidable lawyer."

It has been stated that under Logan's tutelage Lincoln became a "case-lawyer," but this is not true if a case-lawyer be one who has at his tongue's end all the precedents affecting any given state of facts, and who is lost unless his legal trail is plainly blazed. But if the term describes one who makes no excursions into the

field of general legal knowledge and is not concerned with its theories and philosophy, then Lincoln may properly be described as a case-lawyer. He met each problem as it presented itself,



From the collection of Major William H. Lambert

Beginning and conclusion of a legal document in Lincoln's handwriting, signed Logan and Lincoln

attempting to do only one thing at a time, concentrating the whole power of his mind upon the subject in hand until he mastered it, and never forgetting any item of information when once acquired. His mind, he remarked, was like a piece of steel—very hard to scratch, but almost impossible to free of any mark once made upon it. He did not trouble himself to analyze the subtleties and labored profundities of the

law, and never made the slightest pretense to academic knowledge. For real scholarship he had, of course, a profound respect, but the pseudo-learning often displayed in the courts only amused him. On one occasion a lawyer against whom he was practising quoted a Latin maxim, and then, either to impress his hearers or to embarrass his adversary, added, "Is not that so, Mr. Lincoln?"

"If that is Latin," Lincoln responded dryly, "I think you had better call another witness."

While Logan and Lincoln were practising together certain changes were made in the judiciary, and among the new judges elected by the legislature was Stephen Arnold Douglas, then in his twenty-eighth year. Judge Douglas presided over the Fifth Circuit, and Lincoln's practice was almost entirely in the Eighth; but in those days the circuit judges, as a body, formed the Supreme (appellate) Court, and Lincoln must have argued many cases before his future rival for Senatorial and presidential honors, and in one case (Grubb *v.* Crane, 5 Ills., 153) Douglas delivered the prevailing opinion of the court in Lincoln's favor.

The exact date of the dissolution of Logan &

Lincoln's partnership is not clear, but their names appear together in the case of Rogers *v.* Dickey (6 Ills., 636), argued in November, 1843, and they were opposed to each other in Kelly *v.* Garrett (6 Ills., 649) in March, 1844, so the separation must have taken place sometime between these two dates. Mr. Herndon says that political rivalry was at the bottom of the dissolution, and hints that Logan desired the nomination for Congress which eventually went to Lincoln. This may have been so, but it is difficult to see how Lincoln's nomination in 1846 could have caused the partners to separate in 1844, and the fact is that Logan himself made the speech which nominated his ex-partner for Congress, fought hard to make him United States senator from Illinois, and remained his warm friend and supporter as long as he lived. The real cause of the dissolution of the firm is to be found in the character and temperament of the two men. Lincoln was naturally independent, and he outgrew the guidance of his preceptor. He was a born leader, and not a subordinate, and it was against his nature to remain in a position of dependence any longer than was necessary. Therefore, the moment he felt strong enough, he started out for himself.

It is, however, impossible to overestimate the influence which Logan exerted upon his associate. He laid the foundations upon which Lincoln built his legal career, and there was no other lawyer in Illinois who could have given him anything like the same incentive and training. Indeed, there is no legal reputation in the State to-day which is more secure than Logan's, and time has only confirmed the judgment of his peers. The Hon. David Davis, after ten years' experience as circuit judge and fifteen years' service on the bench of the Supreme Court of the United States, declared that he was the ablest lawyer he had ever met, and his opinion justifies the conclusion that Lincoln in his second partnership came into touch with one of the most extraordinary legal minds in the country.

1 A young lawyer once asked Lincoln if the county-seat of Logan County was named after him. "Well, it was named after I was," Mr. Lincoln responded gravely.

XIV

LINCOLN THE HEAD OF A LAW FIRM

IT required no little courage and self-confidence for Lincoln to sever his relations with Logan, for he and his family were entirely dependent upon his earnings, and when he left the judge's office he had not, strictly speaking, a client whom he could call his own. Until that time he had never been obliged to face the difficulties of building up a practice, for he had stepped into an established business when Stuart gave him his start in the law, and a ready-made clientage awaited him in the partnership with Logan. Doubtless he had strengthened and increased the judge's business, but he was not entitled, as a matter of right, to any definite share of it when he left, and the fact that clients cannot be parceled off like merchandise would have prevented a partition of the patronage in any case. Of course the retiring member of a law firm is justi-

fied in accepting any clients who voluntarily follow him to his new office, but there is a delicate professional courtesy to be observed in such matters, and Lincoln was not the sort of man who would willingly supplant an ex-associate. It is not probable, therefore, that he counted on acquiring any of Logan's business when he left him, and there is no indication that the two men ever had the slightest misunderstanding over any such question.

But though he had no business following, Lincoln had good reasons for believing that he could hold his own in the practice of the law at Springfield. He had a wide acquaintance in the neighborhood, he was popular with all sorts and conditions of men, and he knew himself to be the peer of his competitors at the local bar. Lincoln was modest,—modest to the point of humility,—but he was always properly aware of his own abilities. He never boasted of what he could or would accomplish, but he did not attempt to discount failure with self-depreciation, knowing that excuses have merely a personal interest and that accomplishment makes its own claims. He did not challenge events, but met them boldly, instinctively responding at

Drawn by Malcolm Fraser from a photograph

Old Court House (burned several years ago) at Lincoln—the county seat of Logan County—which Lincoln said "was named after he was"

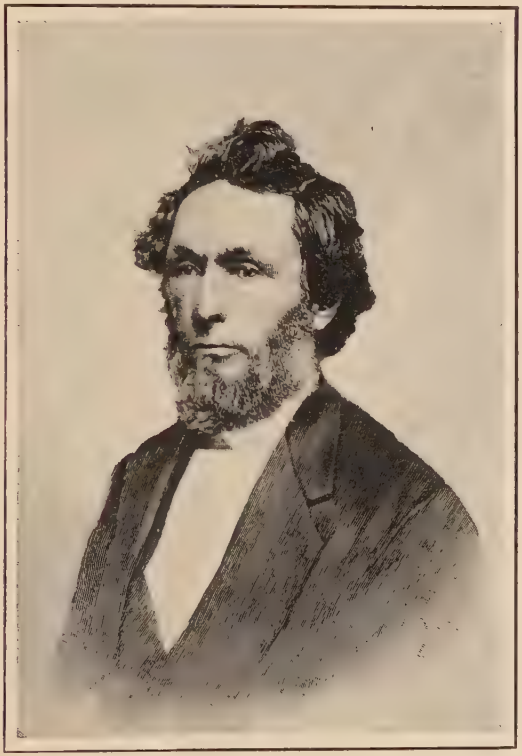
every crisis to the latent powers within him; and in a large measure this was the secret of his success.

It was in this spirit that he faced the future when he withdrew from the valuable alliance with Judge Logan. He thought he could stand alone, and, feeling his own strength, he was anxious to match himself against his contemporaries, relying solely on his own resources. There was no assumption of superiority in this. It was the natural desire of a strong man with a stout heart.

But though he believed in himself and made his hazard of new fortunes without misgiving, Lincoln was neither adventurous nor sanguine by nature. Even as a boy he had not displayed the usual confidence of youth, and in his first public address he advised the voters of Sangamon County that he was already too familiar with disappointments to be very much chagrined if his aspirations met with defeat. He was not exactly despondent, but there was a suggestion of fatalism in his mental attitude toward many questions; and, as he matured and his responsibilities increased, he became more and more thoughtful, serious, and inclined to deep depres-

sion. Indeed, at one time—just before he joined Judge Logan—he was actually threatened with melancholia, induced by a combined attack of "engagement fever" and malaria, and all his life he fought despondency with jest and joke and story, winning where most men would have lost. Humor was the talisman with which he exercised "the fretful fiends of doubt and care."

If Lincoln had yielded to his natural tendencies and encouraged self-distrust at the moment of parting with Judge Logan, he could easily have found another partner with a ready-made practice in Springfield; for there were a number of well-established lawyers who would have been only too glad to make generous terms with Logan's ex-associate. His days of even quasi-dependence were over, however, and he was ambitious to be the head and front of his own business. Of course the simplest method of accomplishing this would have been to practise by himself. Yet had he started out absolutely alone, he would have been obliged to undertake all his own office work, for law clerks were not easily procured in those days, and he was utterly unfitted by nature for coping with small drudg-



William H. Herndon

eries. Moreover, it so happened that one of his friends, recently admitted to the bar, was in need of just the start which a junior partnership provided, and it was under these circumstances that he offered William Henry Herndon the chance of his life.

It is a curious coincidence that all three of Lincoln's partners were, like him, natives of Kentucky; but Herndon's family had moved to Illinois when he was a mere child, and his youth had been passed in the neighborhood of Springfield. He was nine years younger than his senior partner, whom he had first encountered on the eventful occasion when Lincoln had piloted the gallant steamer *Talisman* in her attempt to force the passage of the Sangamon, and this accidental meeting led to a closer acquaintance, which was turned to friendship through an incident connected with the murder of Elijah Lovejoy, the Abolitionist.

Herndon was a student in the college at Jacksonville, Illinois, when Lovejoy set up his anti-slavery press at Alton and began the campaign which resulted in his death at the hands of a mob. The crime aroused violent excitement throughout the State. Indignation meetings were held,

speeches were made, and violent condemnation of the outrage was expressed in every form. Indeed the Jacksonville students voiced their sentiments so openly that Herndon's father, a pronounced slavery man, withdrew his son from the college, fearing that his mind would be poisoned by the Abolition doctrines. But the young man returned to Springfield with his opinions already formed, and it was undoubtedly his bold anti-slavery utterances at a time when the people of Illinois picked their words very carefully on the negro question which cemented his friendship with Lincoln.

Like his future partner, Herndon was first employed as a clerk in a grocery store, and although he does not say so in his biography, it is highly probable that Lincoln procured the position for him, as his employer was Joshua Speed, Lincoln's most intimate friend. Moreover, despite Herndon's silence on the subject, there is every reason to suppose that it was Lincoln who encouraged his young friend to study law. Certainly his legal apprenticeship was passed in Logan & Lincoln's office, and under all the circumstances it is not strange that his preceptor should have kept an eye on him, and taken the first opportunity to advance his for-

tunes after his admission to the bar. It should be stated, however, that Herndon does not explain the partnership in this fashion; but, unfortunately, he is not the most reliable of chroniclers, and there is abundant evidence that he failed to appreciate the situation. Many years afterward a Chicago lawyer quoted Lincoln as saying that he had selected Herndon, supposing him to be a good business man who would keep the office affairs in order, but soon discovered that he had no more system than he himself, and was in reality a good lawyer, "thus proving a double disappointment." Herndon ingenuously printed this explanation in his "True Story of a Great Life," and evidently accepted it with no little complacency. But whatever Lincoln may have thought of his subordinate's legal attainments in later years,—and there is some evidence that Herndon grew to be a fair lawyer,—it is not likely that he ever placed much dependence on his orderly habits; for he must have been thoroughly acquainted with his shortcomings in this and other respects long before he generously offered him his start in life.

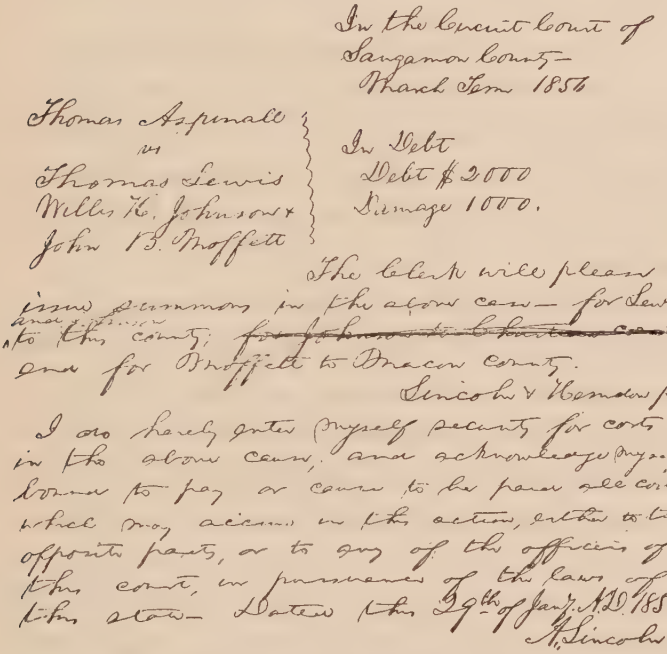
Certainly there never was an office conducted with less method, and Herndon was the last man in the world who could have set things right. It

must be admitted, however, that Lincoln would probably have defeated the most capable and persistent of managers in any case; for the only method he ever personally introduced into the firm's affairs was the immediate division of all fees which came into his hands, giving his partner his share at once, if he happened to be present, or placing it in an envelope indorsed, "Smith *v.* Jones—Herndon's half," if he chanced to be away. This was the beginning and the end of office organization as far as the senior partner was concerned.

Despite its slack business methods, however, the firm of Lincoln & Herndon met with fair success, the junior partner making a good clerical assistant in the drawing of pleadings and the minutiæ of procedure, and in 1844-5 the senior partner argued no less than thirty-three appeals before the Supreme Court, an excellent first-year record.[1] Doubtless he would have been even more successful at the outset had

[1] The writer's examination of the Illinois Circuit Court records shows that Lincoln conducted all the trial work of the firm at this period. It is stated in the third volume of the McLean County Historical Society's transactions that Herndon never did any circuit work during his partnership with Lincoln; but this is manifestly an error, for his name appears frequently in the records of later years.

he devoted himself exclusively to the law, but in 1845 he was again a candidate for the congressional nomination, and his preparation for the


In the Circuit Court of
Sangamon County—
March Term 1856

Thomas Aspinall
vs
Thomas Lewis
Willis K. Johnson &
John B. Moffett

In Debt
Debt $2000
Damage 1000.

The Clerk will please
issue Summons in the above case— for Lewis
and Johnson to this county; ~~for Johnson to Sangamon County~~
and for Moffett to Macon County.
Lincoln & Herndon p.q.

I do hereby enter myself security for costs
in the above cause, and acknowledge myself
bound to pay or cause to be paid all costs
which may accrue in the action, either to the
opposite party, or to any of the officers of
the court, in pursuance of the laws of
this state— Dated this 29th of Jany. A.D. 1856
A. Lincoln

From the collection of Major William H. Lambert

Legal document in Lincoln's handwriting, signed with the firm name, and by Lincoln, personally, as security for costs

campaign necessarily diverted his attention. The election took place in 1846, and, after a sharp contest, he was returned by a large majority over Peter Cartwright, the itinerant preacher, who had been one of his successful rivals in his

first canvass for the legislature, and whose grandson he was destined to save from the gallows by a remarkable and dramatic appeal to the jury.

The partnership of Lincoln and Herndon did not immediately terminate as a result of his election; for Congress did not convene until late in the next year, and the firm continued in active practice until the senior member left for Washington.

Lincoln was then in his thirty-ninth year. His life had been eventful, his rise from absolute obscurity phenomenal, and his influence in his own State and party remarkable. But the character of the man is well illustrated in the account which he gave of himself in the "Congressional Dictionary," and, in view of some of the voluminous memoirs of later members which adorn the modern official directory, his contribution is suggestive and instructive. It contains just forty-eight words, and reads as follows:

Born February 12, 1809, in Hardin County, Kentucky.

Education, defective.

Profession, a lawyer.

Have been a captain of volunteers in Black Hawk War.

Postmaster in a very small office.

Four times a member of the Illinois legislature and a member of the lower house of Congress.

XV

LINCOLN THE LAWYER IN CONGRESS

LINCOLN took his new honors very simply, even a little sadly. "Being elected to Congress," he wrote, "though I am grateful to our friends for having done it, has not pleased me as much as I expected." Later he wrote of his experiences: "I find speaking here and elsewhere about the same thing. I am about as badly scared and no worse than I am when I speak in court." But, unlike the Irishman he was fond of telling about, whose heart was as valiant as any one's, but whose cowardly legs would run away with him at the approach of danger, Lincoln conquered his timidity and speedily displayed a courage of which no mere politician would have been capable.

In 1840, Texas had declared its independence, and under the terms of a treaty made with the Mexican general Santa Anna, the new republic

claimed the east bank of the Rio Grande from source to mouth as its proper and legal boundary. It is true that Santa Anna had made such a treaty, but as it was signed while that not too valiant gentleman was a prisoner and in fear of his life, his acceptance of his captors' ideas as to boundaries could hardly be regarded as binding on his country, especially in view of the fact that Mexico had promptly repudiated his alleged treaty and continued the war it was supposed to have settled. Under ordinary circumstances it is doubtful if the United States would have insisted upon the very questionable title of Texas to the area in dispute; but the new republic had applied for admission to the Union and the provisions of the act admitting it created a temptation which the politicians of the country were unable to resist. The pro-slavery party in the national legislature was beginning to need reinforcements, especially in the Senate, and the act conferring statehood upon Texas provided that several States might be carved out of the acquired territory; and as each new State meant two votes in the Senate this legislation promised to offset the admission of free States and keep the dominant party in control. Then, as a sop to

the anti-slavery agitators, it was solemnly enacted that in such of the new States as lay north of 36° 30′ (the Missouri Compromise line) slavery should be absolutely prohibited, while in those which lay south of that boundary slavery might exist or might not, as the constitutions of the new States provided. When it is remembered that no land claimed by Texas lay north of 36° 30′, the farcical nature of this concession is apparent; but it won enough votes in the Presidential campaign to insure the admission of the proposed new State, and the pro-slavery politicians had every incentive to make its dimensions as generous as possible. Under all the circumstances, President Polk interpreted his election as a popular mandate to support the Texan claims, and the moment the State was admitted to the Union he ordered the army to occupy the disputed territory, and the country accepted the war which followed in an outburst of enthusiasm over the success of our arms.

Such was the situation when Lincoln took his seat in Congress; but although some of his warmest friends were at the front and almost all his constituents approved of the war, he would not close his eyes to the facts and refused to be

dazzled by military glory. There was a great chance for the orator and cheap patriot in the fact that a mere handful of Americans was scattering thousands of Mexicans in every battle, and Lincoln was urged to make the most of his opportunity and distinguish himself. But although he knew what was expected of him and what alone would satisfy his friends, and was well aware that no critic of his country is tolerated while its foes are under arms, he refused to compromise with his conscience and fought the government policy with all his might and main. Then for the first time in his public life his power and training as a lawyer were called into play, and in a series of questions which no one but a skilful cross-examiner could have phrased he disposed of the casuistical explanations of the war.

President Polk, in his several messages to Congress, had repeatedly referred to "the Mexican invasion of our territory and the blood of our fellow-citizens shed *on our soil,*" and quoting these statements as his text, Lincoln introduced his now famous "Spot Resolutions," wherein the President was requested to answer eight questions calculated to inform the House whether the particular spot on which the blood

of our citizens was shed was or was not at that time "our own soil." There was no escape for the Executive from these questions: they were pertinent, penetrating, and not without a certain grave humor, and each was so drawn as to preclude the possibility of equivocation or evasion. Moreover, they showed an historical knowledge of the facts which could not be trifled with, and no one supporting the governmental policy could possibly have answered them all without being caught in a contradiction.

Resolved by the House of Representatives [they began], That the President of the United States be respectfully requested to inform this House—

First. Whether the spot on which the blood of our citizens was shed, as in his messages declared, was or was not within the territory of Spain, at least after the treaty of 1819 until the Mexican revolution.

Second. Whether that spot is or is not within the territory which was wrested from Spain by the revolutionary government of Mexico.

Third. Whether that spot is or is not within a settlement of people, which settlement existed long before the Texas revolution and until its inhabitants fled before the approach of the United States Army.

Fourth. Whether that settlement is or is not isolated from any and all other settlements by the Gulf and the Rio Grande on the south and west, and by wide uninhabited regions on the north and east.

Fifth. Whether the people of that settlement, or a

majority of them, or any of them, have ever submitted themselves to the government or laws of Texas or of the United States, by consent or by compulsion, either by accepting office, or voting at elections, or paying tax, or serving on juries, or having process served upon them, or in any other way.

Sixth. Whether the people of that settlement did or did not flee from the approach of the United States army, leaving unprotected their homes and their growing crops, *before* the blood was shed, as in the messages stated; and whether the first blood so shed was or was not shed within the inclosure of one of the people who had thus fled from it.

Seventh. Whether our citizens whose blood was shed, as in his messages declared, were or were not at that time armed officers and soldiers, sent into that settlement by the military order of the President, through the Secretary of War.

Eighth. Whether the military force of the United States was or was not so sent into that settlement after General Taylor had more than once intimated to the War Department that in his opinion no such movement was necessary to the defense or protection of Texas.

No interpellation of a government was ever phrased in more telling questions. They were unanswerable, and the administration sought safety in silence.

Lincoln soon heard from these "Spot Resolutions," his home friends protesting vehemently that he ought not to antagonize the government in the face of a foreign war, and his political opponents seizing upon

his action to fasten the charge of unpatriotic conduct, if not treason, on his party. But neither reproaches nor aspersions caused Lincoln to change his attitude. To his friends he explained that he would vote, and had always voted, for whatever was necessary for the support of the army in the field, but the policy which had sent it there was a national disgrace which could not be palliated with self-respect and honor. The claim that the war was not aggressive reminded him, he declared, of the Illinois farmer who asserted: "I ain't greedy 'bout land. I only just wants what jines mine."

But Whigs and Democrats alike were carried away by the war enthusiasm. Even those who did not wholly approve of the Government's attitude accepted the result with patriotic satisfaction, and it was with keen delight that Lincoln saw the administration lose all political advantage from its policy by the Whig nomination of the war-hero Taylor for the Presidency, which, Lincoln declared, "took the Democrats on their blind side." But though the popularity of his party's candidate was due to achievements in the field, the Illinois congressman urged his friends not to abate their criticisms of the war

or excuse it in any way. General Taylor was a brave soldier who obeyed orders even when he did not personally approve them, he declared, but his candidacy did not demand an indorsement of the war, and any such action would imperil the position of the party. *"In law,"* he wrote to General Linder, *"it is good policy never to plead what you need not, lest you oblige yourself to prove what you cannot."*

Never was a legal maxim more happily paraphrased or more aptly applied. Even in party politics the keen lawyer is apparent in Lincoln's every move.

The new congressman's activities were not, however, confined to combating and exposing the administration's policies, but quietly and unobtrusively he was working for a cause in which his heart and soul were enlisted. As early as 1837, while in the Illinois legislature, he had placed himself upon record as opposing the extension of slavery and favoring its exclusion from the District of Columbia, and he had not been long in Washington before he put his theories to the test. Here again the mind and hand of a shrewd lawyer are strongly evidenced. It was his legal train-

ing which taught Lincoln the value of collateral attack. He knew, as a lawyer, that an unobtrusive precedent sometimes decides a mighty issue, and that it is often good legal tactics to anticipate the coming of great events by establishing the law in some minor litigation. Doubtless it was with this intent that he quietly prepared his bill for gradual compensatory emancipation of the slaves in the tiny District of Columbia, and obtained support for the measure in high quarters. How nearly he succeeded in creating this precedent is a matter of history, but it was not fated that the far-sighted lawyer should succeed in his skilful move, and the measure never came to vote. Had his manœuver been supported, it is more than possible that the greatest issue of our time would have been judicially decided instead of being left to the arbitrament of arms.

At the close of the congressional session Lincoln visited New England for the first time, making political addresses for Taylor at Boston, Dedham, Roxbury, Cambridge, and other places, and his speeches attracted some favorable notice; but after a short tour he returned to Springfield, resolved to retire from politics at the end of his

congressional term. Undoubtedly he could have had a renomination had he so desired, but he felt himself pledged not to seek a second term. "I can say, as Mr. Clay said of the annexation of Texas," he wrote, "that 'personally I would not object' to a reëlection, although I thought at the time, and still think, it would be quite as well to return to the law at the end of a single term. . . . If it should happen that nobody else wishes to be elected, I could not refuse the people the right of sending me again. But to enter myself as a competitor of others, or to authorize any one so to enter me, is what my word and honor forbid."

Somebody else did, however, desire to be elected, and Lincoln heartily seconded Judge Logan's ambition. But Logan did not possess his ex-associate's personal charm, and only a man of strong personal magnetism could have won for the Whigs in that year, and the judge was hopelessly defeated.

In March, 1849, Lincoln's official term expired, and then for the first and only time in his life he became an applicant for office. The post he desired was the commissionership of the General Land Office in Illinois, but Justin But-

terfield, a fellow-member of the bar from Chicago was appointed, and Lincoln was afterward offered, and fortunately declined, the governorship of Oregon, returning to Springfield and the practice of the law, numbering among the clients whom he had acquired in Washington no less a person than Daniel Webster,[1] a somewhat authoritative recognition of Lincoln as a lawyer.

[1] Mr. Ben: Perley Poore is authority for the statement that Webster insisted that Lincoln charged him too little for his services, and that he always felt himself in his counsel's debt. The matter on which he had retained him involved clearing the title to certain real estate in an embryo city (probably Rock Island City) laid out where Rock River empties into the Mississippi.

Grant Goodrich

XVI

LIFE ON THE ILLINOIS CIRCUIT

IT has been repeatedly asserted that Lincoln's legal reputation was entirely local, and that he was unknown as a lawyer beyond his immediate neighborhood; yet it is a fact that he had no sooner announced his intention to resume practice than he was offered a partnership by Mr. Grant Goodrich, one of the prominent attorneys of Chicago, with a wide and lucrative clientage. Lincoln had an idea, however, that he was threatened with consumption, and fearing that city work would undermine his health, he declined the proposal and returned to his old office in Springfield.

There is no evidence, except his own, that Herndon maintained anything more than a nominal practice after he was left to his own devices; but nevertheless Lincoln offered to continue the

partnership with him on the same generous terms which had governed their original alliance, and in the spring of 1849 the firm of Lincoln & Herndon again started in business, with headquarters in a little three-story building on the west side of the public square of Springfield, about where the Myers Building now stands. The office was neither pretentious nor commodious, but it met the requirements of the times, and its equipment, though meager, would compare very favorably with that of many a country law office of the present day. Lincoln saw but little of this official work-room, however, for he left all matters of routine and local business to Herndon and devoted himself to circuit work—the most picturesque practice of the law which is recorded in the legal annals of this country.

Illinois in 1849 was divided into nine judicial districts, each presided over by a judge who traveled from one county-seat to another within his jurisdiction, hearing civil and criminal cases and acting as an appellate tribunal for minor causes decided by justices of the peace, and during the greater part of the year these judges were continually on their rounds, followed by the members of the

local bar.[1] In early times the condition of the roads forbade the use of wheels, and the judge

Drawn by Harry Fenn

Original offices (on the second floor) of Lincoln & Herndon—exterior

made his trips on horseback, accompanied by a cavalcade of lawyers who forded the streams and defied the weather in the interest of their clients,

[1] Prior to 1848 the circuit judges convened twice a year at Springfield and sat as a court of appeal (called the Supreme Court) to pass on judgments of the circuit courts sent them for

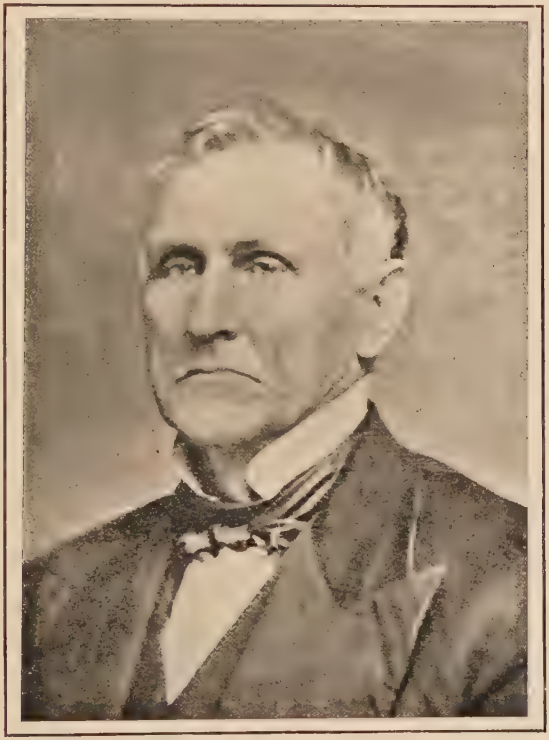
making light of many hardships in their zeal for the profession, and forming a gay if not very learned company, warmly welcomed and honored in every county-seat.

Before his election to Congress, Lincoln had been one of the equestrian retinue of the Hon. Samuel Treat, who at that time presided over the destinies of the Eighth Judicial Circuit, and the big leather saddle-bags[1] which carried the lawyer's papers and belongings are in existence to-day; but by 1849 wheels could be used with some comfort in traveling, and when Lincoln resumed his professional duties a procession of buggies and carry-alls marked the progress of the court.

It was an open and sparsely settled country through which the judge and lawyers journeyed in those days, a country almost skirting the wilderness from which it had been only recently reclaimed, a new, free, wind-swept, and in many

review, each judge withdrawing, of course, while his own decisions were under consideration. After 1848, however, three Supreme Court judges were appointed, who performed no circuit work, and the sessions of the court were held not only at Springfield, but also at Ottawa and Mount Vernon.

1 The Hon. Robert Lincoln told the writer that he distinctly remembers seeing his father start out on horseback, with his saddle-bags, to accompany the judge on the circuit.



Hon. Samuel H. Treat

Judge of the old 8th Illinois Circuit

respects beautiful country, rich with promise and possibility. Vast stretches of wonderful prairie-land rolled between the little towns which served as the centers of government for the respective counties, and so great were the distances that several days were sometimes consumed in traveling from point to point. In 1849 the Eighth Circuit included no less than fourteen counties,—Sangamon, Tazewell, Woodford, McLean, Logan, DeWitt, Piatt, Champaign, Vermilion, Edgar, Shelby, Moultrie, Macon and Christian,—and its dimensions were at least a hundred and ten by a hundred and forty miles. To-day there are eighteen judges doing duty in the district covered by one justice in the early fifties, and it is not surprising that Lincoln's attendance on the circuit occupied him at least six months of every year. Not many lawyers devoted themselves to the work as closely as he did. Some confined their attention to a few counties, others traveled half the circuit, and others even further; but Lincoln was the only member of the bar who, year after year, accompanied the judge through the entire district.

The custom of riding the circuit was, of course, born of necessity, for in the early days there was

not sufficient legal business in any one of the small communities to support a lawyer, to say nothing of a law firm. People who wanted to begin lawsuits usually sought their advisers in the largest town in their vicinity, or waited the arrival of the circuit judge and the attendant bar, when they could look over the field and pick out the most available champion. Frequently, however, the local attorneys were retained to prepare the papers, with instructions to select a suitable man for the court work when the circuit-riding bar arrived on the scene. There was therefore an excellent chance of securing good business by constant attendance on the itinerant court, and the lawyer who visited all the counties was certain to be more widely known than any of his fellow-practitioners. At the time of Lincoln's second partnership with Herndon, however, such work was more a matter of choice than necessity. Doubtless the firm could have made a satisfactory income had the senior partner devoted himself to the courts nearest his home and maintained a branch office in the distant counties, as other lawyers did; but he liked the freedom of the road, and the happiest days of his life were those he passed on these long legal tours.

Map of Illinois

The shaded portion indicates the circuit of Lincoln's law practice

The Eighth Circuit, as organized under the provisions of the Illinois Session Laws of 1847, page 31, is shown by the shaded area on the above map. Later (in 1853) it was reduced to Sangamon, Logan, McLean, Woodford, Tazewell, DeWitt, Champaign, and Vermilion counties (Illinois Session Laws, 1853, page 63); and in 1857 it was further reduced to DeWitt, Logan, McLean, Champaign, and Vermilion counties (Illinois Session Laws, 1857, page 12). Even after Sangamon county was transferred to another circuit, Lincoln still continued to travel the Eighth.

Traveling the circuit was comparatively comfortable in the fifties, but it still lacked something of the luxurious, and at times it involved hardships which could be surmounted only by the best of health and spirits.

The judge and his flock usually started out from the State capital as soon as the roads admitted of travel in the early spring, and drove to the nearest county-seat on their route. At times his Honor traveled alone, but frequently some member of the bar occupied a seat in his carriage, and the other lawyers made their way to the rendezvous as best they could, three or more often clubbing together and hiring a conveyance for the trip. Lincoln sometimes traveled with these small parties, but after the first year or so he maintained a horse and buggy of his own, both of which were pretty "wobbly" according to Judge Weldon, with whom they were left when their owner took to the iron steed.

But Illinois railroads connected only the centers of population in the early fifties, and the county-seats on the Eighth Circuit were not much more than villages. Each bore a family resemblance to the other, and all were strongly suggestive of the typical New England hamlet.

The settlement almost invariably clustered around a public square of generous dimensions, in the center of which stood the court-house, a

Drawn by Harry Fenn from a photograph

Old court-house at Metamora, Woodford County, Illinois
Lincoln practised in this building, which is now used as a town hall

substantial building of brick or stone. The square itself was guarded from the highroad by a series of wooden hitching-rails, and teams of all sorts nosed this fence from the opening to the closing of the term; for business and pleasure both demand the attendance of the whole county

on court-days, and shelter for the horses and wagons was frequently unobtainable. Even the lawyers had difficulty in finding accomodations for their animals; and as the supply of labor was extremely limited, those who traveled in private rigs often had to be their own hostlers.

The stable facilities, however, were not infrequently superior to those of the hotels. Sometimes the tiny taverns which attempted to house the visitors boasted only one habitable room, and as this was invariably reserved for the judge, the lawyers not included in his hospitality had to sleep anywhere they could—on the sofas, the tables, the window-seats, the floor, and even in the lofts and horse-stalls. It was no uncommon thing for his Honor to invite three or four men to occupy his room, but the one who was selected to share Judge Davis's bed might about as well have slept on the floor, for that jurist was almost as wide as the ordinary four-poster. Lincoln and he made a fair average as far as width was concerned, but as the former was six feet four and had to lie crosswise to fit in the average bed, their combination was not a pronounced success.

In the dining-room the tavern-keeper usually

reserved one end of the long table for the bar, and the judge was always expected to preside at the head of the board; but the function was frequently a Barmecide feast, and, as Lincoln

Drawn by Harry Fenn from a contemporary print

Original offices of Lincoln & Herndon—interior

remarked, there was very little advantage in sitting at the head of the table unless the food improved as you moved up. Except for this distinction as to place, there was no difference made between the legal fraternity and the other guests of the hotel, and litigants, witnesses, jurors, and prisoners out on bail were accommodated at the

same table and enjoyed the same fare. Indeed, Mr. Whitney recalls several persons actually on trial who not only took their meals with his Honor and the bar, but also spent their evenings in the judge's room, without the slightest embarrassment to any one.

The inconvenience and discomforts of the life were at times almost unbearable, but Lincoln was never known to join in the frequent protests and complaints of his associates. Indeed, his sense of humor often saved the situation and made it tolerable, if not enjoyable, for himself and others. He saw the comic side of all that irritated men of more nervous temperament, and disposed of annoyances with a laugh so hearty and infectious that even the disgruntled victims of petty misfortunes had to join in his mirth. In an indolent, easy manner he studied the various types of human nature encountered on the road, took a direct personal interest in the people he met, and made friends at every stopping-place. All the court clerks and county officials were glad to see him come and sorry to have him depart; he had a warm welcome at every tavern door and all sorts and conditions of men claimed his close acquaintance. But, despite this general

popularity, Lincoln was not, as he has frequently been depicted, an irresponsible hail-fellow-well-met, familiarly known as "Abe," who went about slapping people on the back and encouraging similar salutations. Nothing could be further from the truth than this. Judge Weldon informed the writer that in all his acquaintance with Lincoln on the circuit, the only person he ever heard address him by his first name was a street urchin whose impertinence astonished the future President quite as much as it amused him, and there is no reason to believe that he courted such familiarities after he reached maturity. Certainly his correspondence shows that he almost invariably addressed people by their last names —even his most intimate friends like Speed and Davis; and although Herndon relates anecdotes in which he figures as "Billie," Lincoln's letters refer to him as Herndon or William, although he was a much younger man than his partner and something of a protégé.

This is not at all suggestive of the arm-around-the-neck familiarity with which Lincoln is credited, and, as a matter of fact, he admitted very few friends to his confidence, and his intimates never numbered more than two or three.

He was undoubtedly easy-going, pleasant-spoken, cordial, unconventional, and entirely approachable, but he had his own distinctive barrier of dignity which no one ever surmounted.

It is easy to understand the fascination of the circuit life. The members of the bar formed a bright, congenial company who strove mightily with each other in the court-rooms, but ate and drank as friends. They were persons of credit and renown in the eyes of all the assembled country-side, oracles to the political gossips, and leaders of public opinion whose words were often law. Every man knew every other man, and the close, daily contact in the court-rooms and on the road created a spirit of comradeship which no mere professional interest could supply. There was little of dull routine in the life, less of cold formality, nothing of the anxieties and cares which characterize modern practice, and the "play-instinct," which few men ever entirely outgrow, was strongly in evidence at every term of court. One group of the merry company founded a mock tribunal which formulated all sorts of ridiculous charges against their fellow-practitioners and tried the offenders with burlesque pomp and severity, to the delight of all beholders.

Others were good at song and story, and many of the evenings passed in the judge's private room were all-night sessions of mirth and good-fellowship which made for lasting friendship and an *esprit de corps* destined to have a marked effect upon more than one career. The whole atmosphere of the profession favored individuality, self-expression, and development, and Lincoln responded to all these encouraging influences. He was distinctly a human product, and his growth of mind and character was most happily fostered by the free life of the circuit, where he was in close touch with a vigorous, independent, unartificial people drawn from every part and class of the country and all representatively American. Theirs was the force which really molded the man at the formative period of his career, and the most important individual influence on his future may be fairly ascribed to the judge before whom he practised and with whom he virtually lived for ten successive years.

XVII

JUDGE DAVIS AND LINCOLN

JUDGE DAVID DAVIS was a lawyer of marked ability and strong individuality, a shrewd business man, a loyal friend, a violent partizan of generous impulses and deep-rooted prejudices, an arbitrary and even despotic ruler of his own domain, but a fearless administrator of the law and an absolutely honest and capable judge. He and Lincoln had met as lawyers in Springfield, but there does not appear to have been any intimacy between them until Lincoln resumed practice at the close of his congressional term, when their acquaintance speedily developed into a friendship of enduring quality and historic importance.

The relations of the bench and bar were necessarily much closer in the early fifties than they are to-day, and the lawyers of the Eighth Circuit were practically a big family of which

Hon. David Davis

Judge of old 8th Illinois Circuit. Later an Associate Justice of the Supreme Court of the United States

Davis was the official head, and over which he exerted a really parental influence. Not only did his Honor's ample girth and other physical proportions suggest a paterfamilias, but his mental attitude toward the bar was at once domineering and fatherly, with the domineering element always prominent. "He used to remind me of a big schoolmaster with a lot of little boys at his heels whenever I saw him stumping toward the court-house," remarks a now distinguished lawyer, and it cannot be denied that there was a good deal of the pedagogue about the judge. Certainly he knew how to maintain order in his court, but there was always more tact than severity in his enforcement of discipline. "Mr. Sheriff, you will see that nobody except General Linder is allowed to smoke in my court," was his method of administering a rebuke to the Attorney-General of Illinois, and hints of this kind seldom went astray. But though he insisted upon maintaining the dignity of his office upon every proper occasion, he dispensed with all unnecessary etiquette, and outside the court-room he was democratic to the last degree.

Almost every man, woman, and child in the fourteen counties of his circuit knew Judge

Davis, and he undoubtedly was personally acquainted with a greater number of the residents than any other one man in the district. It naturally followed that he knew the jurors who were selected by the sheriff, and in some counties the same men composed the jury term after term. They were his friends, but the idea that they would be subservient to his wishes on this account, or that he would attempt to take advantage of their friendship to impose his authority upon them, never, apparently, entered any one's head. On the contrary, he relied on the intelligence, fairness, and integrity of the talesmen to a far greater extent than is practical in modern courts; but if there was the slightest cause for suspecting that a litigant would not receive an impartial verdict at their hands, he promptly removed the case into another circuit, and he governed himself by the same strict rules which he applied to the juries. In the minutes of the court in Tazewell County the writer discovered a significant entry, evidently in Davis's handwriting, written opposite the case of Hall *v.* Woodward, reading somewhat as follows: "Jury disagreed. Venue changed on account of the prejudice of the judge."

But though he was impartial in all his official duties, his Honor was a man of strong likes and dislikes, and he took no pains to conceal his feelings toward the different members of the bar. Lincoln, Leonard Swett, Judge Logan, and a few others continually basked in the sunshine of his approval; but Lincoln was the prime favorite of the privileged clique which made the judge's room its headquarters, and almost from the first he was distinguished at every possible opportunity in a way which would have been fatal to the average man. More than one of the judge's coterie has testified that his Honor would brook no interruption of the conversation when Lincoln had the floor; and if his favorite happened to be absent, he took but little interest or enjoyment in the rest of the company which gathered at his rooms. "Where 's Lincoln?" he would inquire irritably. "Here, somebody, go and tell Lincoln to come here."

Under such circumstances it is nothing short of remarkable that the man was not loathed instead of loved by the rank and file of the profession. He was naturally unassuming, but until he came into contact with Judge Davis he had never been placed in a position

of much power. Davis, however, recognized the masterly quality of his mind, and his views and arguments soon began to have more weight and influence with the court than those of any other member of the bar. His Honor had too much individuality and independence actually to defer to any one else's opinion, but his favorite always had the ear of the court, and this in itself gave him a commandingly important position.

"It is easy for the weak to be gentle," writes a distinguished student of human nature. "Most people can bear adversity. But if you wish to know what a man really is, give him power. That is the supreme test."

No one but an experienced lawyer can appreciate the immense power wielded by the advocate on whom the bench relies. The mere fact that he has the private ear of the court is, in itself, a temptation which has proved too much for more than one distinguished member of the bar; and though the judge be never so honest and impartial, there are countless forms in which the personal equation may be invoked. The average practitioner who occupies this post of vantage seldom makes any effort to guard himself against a misuse of his opportunities. He does

not hesitate to arrogate to himself small licenses which he knows will not be denied; he crowds and overbears adversaries less fortunately situated, and generally asserts himself at their expense. Every court-room in the world harbors these privileged bullies. Not all of them, of course, make a brutal display of their powers. Many are extremely subtle in bringing the necessary pressure to bear, and some are mentally so constituted that they are not conscious of exerting any offensive influence against their fellow-practitioners. But in ninety-nine cases out of a hundred the leaders of the bar yield to temptations which Lincoln resisted, and few have ever been tested as he was. Yet he worked in an atmosphere of this sort for ten years, schooling himself against the open favor of the court; and of such training and temptations there came to the nation's guidance a master of infinite tact.

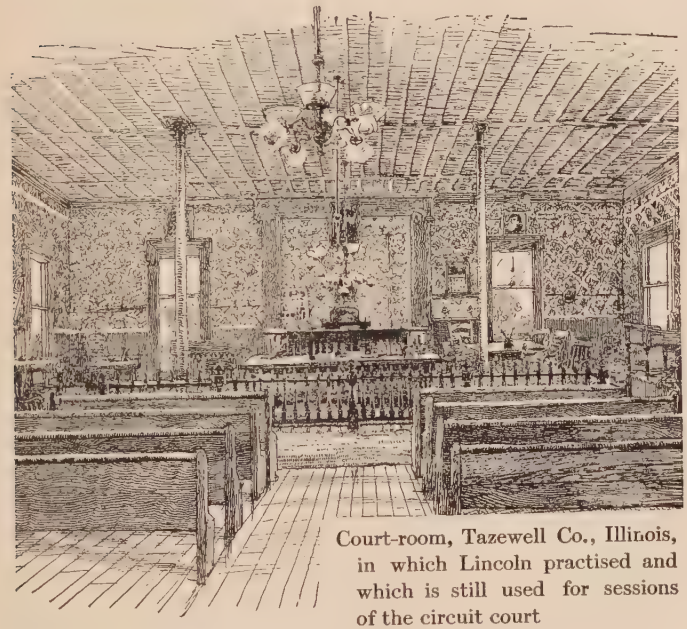
Not only did he refrain from imposing himself upon his contemporaries, but younger members of the profession received every possible consideration at his hands. It is the universal testimony of those who met him in daily practice that he never wantonly sought to exalt himself at the expense of a fellow-practitioner, and his ju-

niors constantly retained him to aid them in cases, without the slightest fear that he would attempt to overshadow them, take the credit for victory, or shelve responsibility for a defeat.

"The first case I ever had in Tazewell County was the People *v.* Gideon Hawley," remarked Mr. James Haines[1] while talking with the writer. "There were thirty-two indictments against my client for obstructing a public road, and as the authorities were inclined to make an example, the case was somewhat serious. I retained Mr. Lincoln to conduct the defense, and after we had completed our preparations he said, 'Of course you will make the opening speech.' I was surprised, for I had supposed that he would want to assume full control, and I said as much, adding that I would prefer him to take the lead. 'No,' he answered; and then laying a hand on my shoulder, he continued: 'I want you to open the case, and when you are doing it talk to the jury as though your client's fate depends on every word you utter. Forget that you have any one to fall back upon, and you will do justice to yourself and your client.' I have never forgot-

[1] Mr. Haines is now living in Pekin, Tazewell County, and the court-house, which is still standing in that county, and in which Mr. Lincoln practised, was erected under his supervision.

ten the kind, gentle, and tactful manner in which he spoke those words," Mr. Haines continued; "and that is a fair sample of the way he treated younger members of the bar."



Court-room, Tazewell Co., Illinois, in which Lincoln practised and which is still used for sessions of the circuit court

This, with other testimony of a similar nature, shows the man in the making; and no one who is familiar with Lincoln's subsequent conduct as Commander-in-chief of the army can fail to recognize the bearing of his professional training upon his official actions. Again and again he assumed all responsibility for the blunders of his

generals, and it will be remembered that when Grant succeeded he instantly wrote him, not only disclaiming any share of the credit, but acknowledging that the executive had doubted the wisdom of his plans.

Judge Davis's confidence in Lincoln's ability was evidenced at all times, but it often took a form which must appear nothing less than amazing to the modern practitioner, for he frequently assigned Lincoln to the bench and left him to conduct the court in his absence. There has been considerable doubt expressed by some biographers as to whether or no Lincoln did actually preside in a judiciary capacity, but there is not the slightest question about the matter. Judge Weldon informed the writer that he personally tried a jury case with Lincoln on the bench, and Mr. Whitney asserts that the future President once conducted an entire term of court in Champaign County. Moreover, there is in existence to-day a judgment in Lincoln's handwriting which was written by him in a case in which he presided as the trial judge. This practice was, of course, irregular, and it is said that two cases were reversed by the Supreme Court because of it; but Judge Weldon told the writer that Lincoln

never presided at a trial unless the attorneys for both parties consented, and that they were generally glad to do so, for in this way delays were

Drawn by Harry Fenn from a photograph

Old court-house at Pekin, Tazewell County, Illinois

Lincoln practised in this building, which is well preserved and the sessions of the Circuit Court are still held in it

avoided and the clients and witnesses accommodated when Davis was unable to hold court.

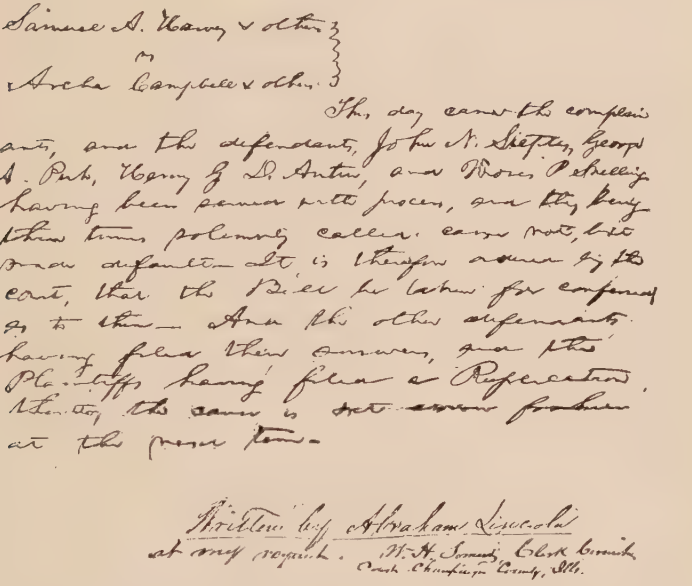
The unofficial character of the position, however, made great demands upon Lincoln's tact, and he had to display rare judgment in exercis-

ing his authority. On one such occasion some young attorneys attempted to embarrass him with technical devices in a case in which there was no real defense. Lincoln heard them with the utmost good-nature and patience, and finally, when they had kept up their tactics for a whole day, he gave a decision in favor of the plaintiff, and wrote the direction for judgment in such form that there was no possible chance for an appeal. "But how are we to get this up to the Supreme Court?" asked one of the attorneys when he found himself cornered. "Well, you 've all been so smart about this case," answered Lincoln, calmly, "that you can find out for yourselves how to carry it up"; and that ended the matter.

Lincoln's earnestness and sense of responsibility deepened as he found himself relied upon as a leader of the bar; and as the years went by he grew more and more grave, meditative, and given to mental abstraction.

"He would frequently lapse into reverie and remain lost in thought long after the rest of us had retired for the night," Judge Weldon told the writer; "and more than once I remember waking up early in the morning to find him sit-

ting before the fire, his mind apparently concentrated on some subject, and with the saddest expression I have ever seen in a human being's eyes."



Written by Abraham Lincoln
at my request. W. H. Somers, Clerk Circuit
Court Champaign County, Ill.

From the collection of Major William H. Lambert

Facsimile of a judgment written by Mr. Lincoln while acting in the place of Judge Davis

No one knows with what thoughts Lincoln was struggling in those hours, but this side of his character has almost disappeared under the mass of silly stories which are coupled with his name. One would think, to read some of the biographies, that he never had a serious moment,

and that most of his life on the circuit was spent in retailing dubious stories to gaping circles of country-folk at wayside taverns. Indeed, one chronicler states that he was frequently pitted against the local champion raconteurs in story-telling tournaments which continued for days, but which never could have lasted long enough to furnish all the pointless jests which seek to illustrate his fame as a fun-maker.

Lincoln was a wit, and, as Ingersoll said, he used any word "which wit could disinfect," but his reputation has suffered at the hands of writers who have employed stories as stop-gaps in their information. Of course, it is far easier and more amusing to attribute a lively story to Lincoln than to give a true picture of the man; but the compilations which have been evolved on this principle, and which picture his life on the circuit as a round of story-telling, are made out of whole cloth—some of which is stolen goods.

"Nothing can be more absurd than to picture Lincoln as a combination of buffoon and drummer," protested one of his surviving contemporaries while discussing this subject with the writer. "He was frequently the life of our little company, keeping us good-natured, making us

see the funny side of things, and generally entertaining us; but to create the impression that the circuit was a circus of which Lincoln was the clown is ridiculous. He was a lawyer engaged in serious and dignified work, and a man who felt his responsibility keenly."

Probably there is no one living who is better entitled to speak on this subject than Mr. James Ewing, a member of the Illinois bar, whose father kept the old National Hotel in Bloomington, where all the lawyers used to stop while on the circuit, and at whose house Lincoln boarded after the hotel was closed. Mr. Ewing was about nine years old when Lincoln first stayed at the National, and for six or seven years afterward he saw and heard him in the company of his associates almost every term of court. "In all my experience," Mr. Ewing informed the writer, "I never heard Mr. Lincoln tell a story for its own sake or simply to raise a laugh. He used stories to illustrate a point, but the idea that he sat around and matched yarns like a commercial traveler is utterly false. I never knew him to do such a thing, and I had ample opportunity for noting him."

"Lincoln would soon have become a bore if he

had traded on his story-telling gifts," remarked another authority. "He traveled with the same men day after day, week after week, and month after month. Even if his fund of anecdotes could have stood the strain, we should not have been able to endure it, for no man exhausts himself or others so quickly as your professional funny man."

But those who have depicted Lincoln on the circuit as a sort of end-man with an itinerant minstrel show, have also done a similar injustice to Davis. More than one scissors-and-paste-pot biographer encourages the inference that it was Davis's partiality for broad stories which caused him to distinguish Lincoln, and we are expected to believe that this was the edifying origin of the friendship of these two distinguished men.[1] Undoubtedly Davis enjoyed a good story, and it may well be conceded that his laugh was as loud and infectious as tradition says it was; but to suppose that

[1] Judge Davis, who was three times elected to the Illinois Circuit Bench (1848, 1855, and 1861), was appointed an associate justice of the Supreme Court of the United States in 1862, and served on that bench with distinction until 1877, when he resigned to become a United States senator from Illinois. He became acting vice-president in 1881, and resigned in 1883. He died at Bloomington, Illinois, June 26, 1886.

a man of his ability would select a mere jester for a friend, or that Lincoln would have consented to serve as a court fool, is preposterous.

Davis had precisely the mental qualities which were best adapted to encourage and develop a man of Lincoln's temperament. He recognized his great ability, admired his modesty, respected his integrity, esteemed his judgment, and helped to school his legal aptitude. He knew the power of the man—knew it through ten years' association with him in the court-room; and it was this knowledge, gained in this way, which formulated his unconquerable belief in the Illinois candidate for the Presidential nomination. *It was Judge Davis and a handful of men who had learned to know and appreciate Lincoln* AS A LAWYER—*a small group of his fellow-practitioners on the Eighth Circuit: Davis, the judge; Swett, the advocate; and Logan, the leader of the bar, but especially Davis—who forced Lincoln upon the Chicago Convention in* 1860, *and thus gave him to the nation.*

XVIII

LEADER OF THE BAR

LINCOLN did not return to any assured clientage at the close of his congressional term, and he had his professional reputation still to make when he began to follow Judge Davis over the circuit. He had had a fairly wide acquaintance in the community before he went to Washington, but the State was rapidly increasing in population, and to the newcomers he was, of course, an utter stranger. Even to the majority of the old inhabitants, he was better known as a stump-speaker and politician than as a lawyer; and, recognizing this, he set to work with a singleness of purpose which had not previously characterized his interest in the law. We have his own word for it that he had then definitely determined to abandon public life, and his most intimate professional associates testify to a marked change in his attitude toward his work from this time on. Thenceforward he bent all his energies

upon equipping himself for his legal duties, preparing his cases with greater care, fortifying himself with reading, and generally becoming more systematic in his studies. It was probably at this time that he began entering notes of cases and authorities in a memorandum-book which he carried with him on the circuit, and which provided him with a ready reference at moments when it was not possible to procure law reports or text-books.[1] His preparation, however, did not stop at legal learning. He began the study of the German language, and was interested in anything which could develop his mind, and he did not abandon any subject once he touched upon it. "In the course of my reading," he told a friend years afterward, "I constantly came across the word 'demonstrate.' I thought at first that I understood its meaning, but soon became satisfied that I did not. I consulted Webster's dictionary. That told me *of certain proof beyond the probability of doubt,* but I could form no idea of what sort of proof that was. I consulted all the books of reference I could find, but with

1 This memorandum-book is now in the possession of Mr. Jesse W. Weik, through whose courtesy the writer was allowed to examine its copious citations and notes.

no better results. You might as well have defined blue to a blind man. At last I said to myself, 'Lincoln, you can never make a lawyer if you do not know what "demonstrate" means,' and so I worked until I could give any proposition of the six books of Euclid at sight. I then found out what 'demonstrate' meant."

This study was performed at odd intervals while he was engaged in trial work on the circuit, and Herndon reports that he frequently saw Lincoln poring over his Euclid by candle-light at night in his bedroom, where three or four other men were sleeping after a hard day's work in the courts. It was discipline of this quality which developed and strengthened the man's mind at his most critical period, and his growth as a lawyer followed as a natural result, though he himself never made the slightest claim to legal eminence. "I am only a mast-fed lawyer," he once protested, meaning that his mind had not been nourished with the sort of educational provender which rounds out the ribs of aptitude, and this recognition of his deficiencies redoubled his efforts. At one time he had apparently thought that his ability as a speaker would carry him through, but doubtless his experience with

Logan and other able lawyers taught him to mistrust his powers in this respect, and his advice to some law students, written in July, 1850, shows his altered attitude. *"Extemporaneous speaking should be practised and cultivated,"* he remarked. *"It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business if he cannot make a speech. And yet there is not a more fatal error than relying too much on speech-making. If any one, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance."*

But even with close application to business and the unmistakable favor of the court, Lincoln did not rise to any immediate recognition at the bar. His ability was of slow growth, and there was nothing showy or impressive about his practice in the courts. Little by little, however, it began to dawn upon the local public that he was the most uniformly effective man of all those who practised on the circuit, not only with the court, but with the juries; but it was the lawyers who first evidenced the discovery by retaining him to try cases for them.

The confidence and appreciation of his com-

petitors is the highest compliment which any lawyer can receive, and it was this professional recognition which largely determined Lincoln's subsequent career, for it enabled him to leave all the minutiæ of practice and the drudgery of preparation to other lawyers and to devote himself almost exclusively to trial work. The result was that, although he had probably a wider acquaintance than any other practitioner on the circuit, he had comparatively few personal clients, most of his business coming through other attorneys, who either retained him of their own initiative or at the suggestion of the litigants. Indeed, his reputation as an advocate became such that some attorneys advertised themselves as his partners; but this merely meant that they usually retained him to try their cases, or possibly that they had some general understanding with him that he would act as counsel for them during certain terms of court or in particular counties. It thus frequently happened that Lincoln knew nothing of either his cause or his client until he arrived at the county-seat where the trial was to be held, and as a term of court seldom lasted more than a few days, he had very little opportunity to prepare himself.

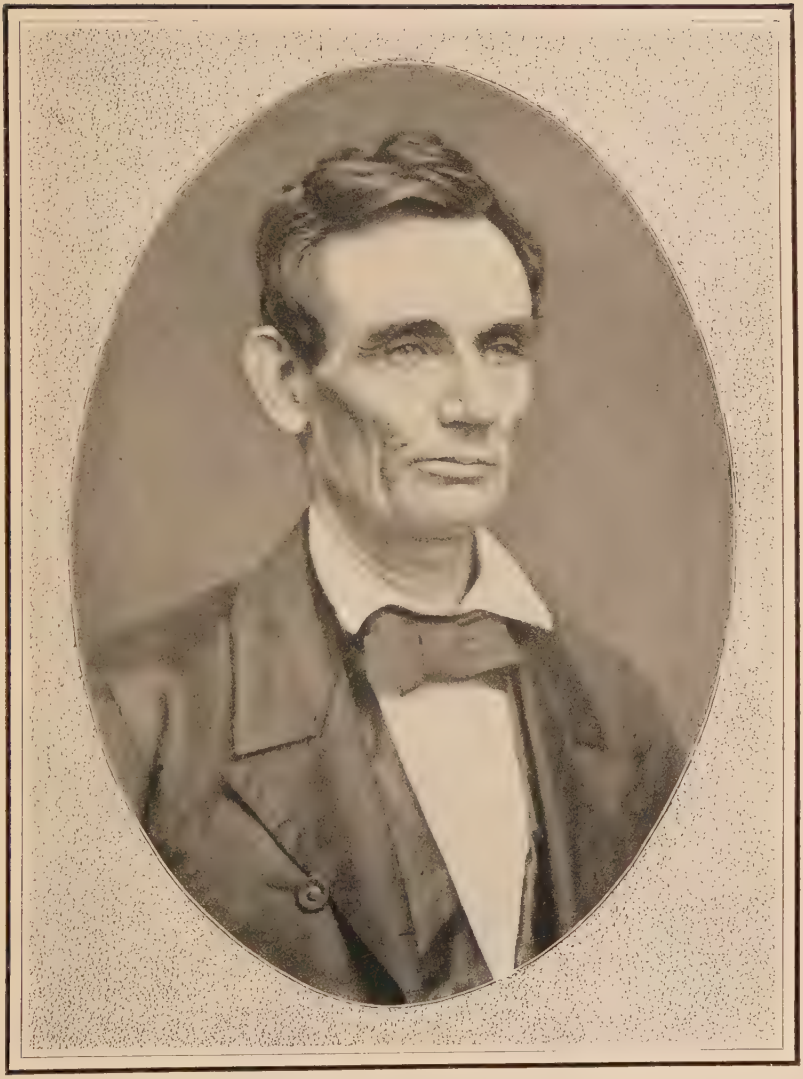
If the local attorney who retained him had an office, he made that his headquarters; but, if, as often happened, there was no such accommodation available, the necessary consultations took place in the tavern, usually in the judge's private room, and regardless of his Honor's presence. Frequently, however, the conference was held out of doors to avoid interruptions, and it was no uncommon thing for Lincoln to be seen seated on the ground under the shade of some convenient tree in the court-house square, consulting with his associates, their clients and witnesses. Of course important litigations were not prepared in this haphazard fashion, but very few lawsuits in those days were complicated, and both sides usually wanted a prompt trial of the matter in dispute.

This class of work naturally brought Lincoln into close touch with all sorts of men and women, and trained him to be a quick and unerring judge of character. Each case was a distinct problem replete with human nature, and it was doubtless this constant insight into the springs and sources of human action which developed his instinctive understanding of the people and taught him to anticipate and lead popular opin-

ion as no other public man in this country had ever done.

It is probable that Lincoln tried more cases between 1849 and 1860 than any other man on the Eighth Circuit. He was the acknowledged leader of the local bar, whose services were constantly in demand, and the one man who could be relied upon to take a case in any of the counties comprising the circuit, for he alone covered the entire route. It is misleading to belittle the value of this daily experience on the ground that most of the litigations were of no great monetary importance. Every lawyer familiar with trial work knows that small cases often raise more difficult questions of law and demand nicer knowledge of legal principles than causes on which millions depend; and it should also be remembered that many of the small suits were, in effect, test cases which settled the law for the new State.

Of course no one could have practised before the court and juries day after day and year after year in this way without learning something, and Lincoln's legal development was marked with every year of his practice. In 1853 the Illinois Central Railroad retained him as its counsel, and



From a photograph

Portrait of Lincoln

not long afterward he appeared for the Rock Island Road and many other important representative interests, and his record of appeal cases in the Supreme Court is equalled by but few members of the Illinois bar.

It is impossible to overestimate the value of these active professional years on Lincoln's subsequent career. They brought him into close contact and collision with able lawyers of every caliber, with men of force and strong character, men whose business it was to reason, persuade, cajole, and intimidate others to their way of thinking, and who employed every device, from legitimate argument to brutal terrorizing, to accomplish their ends. The most capable layman is no match for the trained attorney in an argument, and a man who is familiar with the law can often silence and overawe an intellectual superior who is not armed with similar knowledge. Every lawyer of experience has seen business men of courage and conviction hesitate, vacillate, and practically disintegrate under legal menace and coercion; and all readers of the history of this country know that more than one occupant of the White House, armed with authority, but unskilled in the ways of the

law, has been cowed into practical abdication by tactics familiar to all frequenters of the courts.

Lincoln's daily antagonists were such men as Logan, Stuart, Baker, Browning, Oglesby, Swett, Scott, Cullom, and Palmer—men, drawn from all parts of the country, who later distinguished themselves as judges, congressmen, senators, or governors of States; and besides these and others of equal brilliancy, he met different types and grades of the profession well qualified to prepare him for the great cause which was soon to be entrusted to his care.

Long before he was called to Washington, his daily life in the courts had familiarized him with the roarers and bulldozers of the profession, with the sly and tricky gentry who work by indirection, with the untrustworthy, treacherous, and unscrupulous practitioner, with the broad-minded advocate and the narrow, bigoted partizan.

Years before he encountered them in his cabinet, he had met such men as Stanton and Seward and Chase; and where a man of less experience or other training would have quarreled with them or been himself torn apart in their struggles for supremacy, he handled them with the sure touch

of command and made them work together for the nation. Stanton utterly failed to take Lincoln's measure in the McCormick reaper case (hereafter referred to) but Lincoln took his, and years afterward, when the great war secretary attempted to bulldoze the administration, the patient Executive stood unmoved by his roaring and employed his fanatical egotism to the best possible advantage. Chase played for the Presidency on the Cabinet board, thinking his masked moves would escape the indolent attention of the "mast-fed lawyer," and suddenly found himself checked and manœuvered into a speedy resignation; and history has disclosed the fact that Seward, one of the most distinguished members of the New York bar, unwittingly received more than one lesson in law at the hands of the tactful Executive.

XIX

THE JURY LAWYER

IT is conceded by all his contemporaries that Lincoln was the best all-round jury lawyer of his day in Illinois. Undoubtedly his knowledge of human nature played an important part in his success. He possessed another quality, however, which is almost, if not quite, as essential in jury work, and that is clearness and simplicity of statement.

It will be remembered that in his Sangamon River argument—his first boyish attempt at pleading a case—he had displayed unusual ability in presenting his facts, and with age and experience he developed a perfect genius for statement. His logical mind marshaled facts in such orderly sequence, and he interpreted them in such simple language, that a child could follow him through the most complicated cause, and his mere recital of the issues had the force of argument.

Many people suppose that there is only one

way of telling the truth, and that, given honesty, no art is required to make a frank and fair statement of matters in dispute; but this is a popular delusion. "A truth which is badly put," says Mr. Wells in his "Mankind in the Making," "is not a truth, but an infertile, hybrid lie," and every lawyer of experience knows that not one man in a thousand can make facts speak for themselves. Certainly the average practitioner does not master his material. He is controlled by it, and presents his cause in such a manner as to necessitate contradiction, invite confusion, or challenge belief. He has neither the confidence nor the skill to state the truth, the whole truth, and nothing but the truth, and his omissions and perversions naturally reflect on his honesty or sincerity.

Lincoln, on the contrary, relied on truth, knew how to tell it, and "with perfect sincerity often deceived the deceitful." "A stranger going into a court when he was trying a case," says Mr. Arnold, one of his constant associates, "would after a few minutes find himself instinctively on Lincoln's side and wishing him success."

This lucidity of expression, persuasive clarity, and convincing simplicity is, of course, the dis-

tinctive mark of Lincoln's literary style, in so far as his writing can be said to have a style; and of this habit, nurtured and matured in the court-room, came some of the ablest state papers ever drawn by an American, and some of the acknowledged masterpieces of English prose.

Lincoln not only spoke a language which jurors could understand, but he also took them into his confidence and made them feel, as one of his contemporaries says, that he and they were trying the case together. He was likewise continually the friend of the court who thought it "would be only fair" to let in this, or "only right that that should be conceded," and who "reckoned he must be wrong," when the court overruled him, but who, nevertheless, took a quiet and tactful exception whenever the occasion required it.

"Now about the time he had practised through three quarters of the case in this way," observes Leonard Swett, "his adversary would wake up to find himself beaten. He was as wise as a serpent in the trial of a case, and what he so blandly gave away was only what he could n't get and keep."

Of course these comments were merely intended to emphasize the fact that Lincoln did not try both sides of his cases, as some of his eulogists would have us believe; but unfortunately they have been distorted into an implication that he indulged in tricks of the trade, and that his apparent fairness was nothing better than a device by which he lured the unwary to destruction.

Mr. E. M. Prince, who is now living in Bloomington, Illinois, and who heard Lincoln try over a hundred cases of all sorts, is a competent authority on any question of this kind, and his testimony is direct and convincing. "The truth is," Mr. Prince remarked while talking with the writer, "that Mr. Lincoln had a genius for seeing the real point in a case at once, and aiming steadily at it from the beginning of a trial to the end. The issue in most cases lies in very narrow compass, and the really great lawyer disregards everything not directly tending to that issue. The mediocre advocate is apt to miss the crucial point in his case and is easily diverted with minor matters, and when his eyes are opened he is usually angry and always surprised. Mr. Lincoln instinctively

saw the kernel of every case at the outset, never lost sight of it, and never let it escape the jury. That was the only trick I ever saw him play."

But the best possible proof that Mr. Lincoln was an unusually fair practitioner and generous opponent is the fact that he made no enemies in the ranks of his profession during all his active and varied career. Forbearance is often mistaken for timidity, and tact for weakness, and it not infrequently happened that Lincoln's professional opponents misinterpreted his attitude toward them; but they were always speedily disillusioned. Mr. Swett remarked that "any one who took Lincoln for a simple-minded man [in the court-room] would very soon wake up on his back in a ditch"; and although he seldom resorted to tongue-lashing, and rarely displayed anger, there is abundant evidence that no one ever attacked him with impunity. Judge Weldon told the writer that on one occasion a lawyer challenged a juror because of his personal acquaintance with Mr. Lincoln, who appeared for the other side. Such an objection was regarded as more or less a reflection upon the honor of an attorney in those days, and Judge Davis, who was presiding at the time, promptly overruled the

Leonard Swett

challenge; but when Lincoln rose to examine the jury he gravely followed his adversary's lead and began to ask the talesmen whether they were acquainted with his opponent. After two or three had answered in the affirmative, however, his Honor interfered.

"Now, Mr. Lincoln," he observed severely, "you are wasting time. The mere fact that a juror knows your opponent does not disqualify him."

"No, your Honor," responded Lincoln, dryly. "But I am afraid some of the gentlemen may *not* know him, which would place me at a disadvantage."

A successful jury lawyer must needs be something of an actor at times, and during his apprentice years Lincoln displayed no little histrionic ability in his passionate appeals to the juries. Indeed, his notes in the *Wright* case show that he occasionally reverted to first principles even after he had reached the age of discretion. This case was brought on behalf of the widow of a Revolutionary War soldier whose pension had been cut in two by a rapacious agent, who appropriated half of the sum collected for his alleged services. The facts aroused Lincoln's

indignation, and his memorandum for summing up to the jury ran as follows: *"No contract. Not professional services. Unreasonable charge. Money retained by defendant—not given by plaintiff. Revolutionary War. Describe Valley Forge privations. Ice. Soldiers' bleeding feet. Plaintiff's husband. Soldier leaving home for army.* SKIN DEFENDANT. *Close."*

Mr. Herndon, who quotes this memorandum, testifies that the soldiers' bleeding feet and other pathetic properties were handled very effectively, and that the defendant was skinned to the entire satisfaction of the jury. It was only occasionally, however, that Lincoln indulged in fervid oratory, and his advice to Herndon shows his belief in simplicity and reserve.

"Don't shoot too high," Herndon reports him as saying. "Aim lower, and the common people will understand you. They are the ones you want to reach—at least they are the ones you ought to reach. The educated and refined people will understand you, anyway. If you aim too high, your ideas will go over the heads of the masses and only hit those who need no hitting."

To interest the jurors and make them understand is, of course, the chief endeavor of every

jury advocate, and Lincoln constantly employed his great gifts as a story-teller to illustrate, simplify, and reinforce his arguments, which is another proof that he did not waste this valuable ammunition on tavern loiterers. Stories are more interesting than logic and far more effective with the average audience, and Lincoln's juries usually heard something from him in the way of an apt comparison or illustration which impressed his point upon their minds.

On one occasion when he was defending a case of assault and battery it was proved that the plaintiff had been the aggressor, but the opposing counsel argued that the defendant might have protected himself without inflicting injuries on his assailant.

"That reminds me of the man who was attacked by a farmer's dog, which he killed with a pitchfork," commented Lincoln.

"'What made you kill my dog?' demanded the farmer.

"'What made him try to bite me?' retorted the offender.

"'But why did n't you go at him with the other end of your pitchfork?' persisted the farmer.

"'Well, why did n't he come at me with his other end?' was the retort."

Lincoln not only made effective use of stories with the jury, but frequently employed them in arguing to the court, and he once completely refuted a contention that custom makes law with an anecdote drawn from his own experience.

"Old Squire Bagley from Menard," he began, "once came into my office and said, 'Lincoln, I want your advice as a lawyer. Has a man what 's been elected a justice of the peace a right to issue a marriage license?' I told him he had not. 'Lincoln, I thought you was a lawyer,' he retorted. 'Bob Thomas and me had a bet on this thing, and we agreed to let you decide it; but if thet is your opinion, I don't want it, for I know a thunderin' sight better. *I 've been Squire now eight years, and I 've done it all the time!*'"

Even the attorney whose argument for custom was thus answered must have smiled at this good-natured disposal of his claims, and Lincoln's humor generally freed his criticisms of all offense. "He can compress the most words into the smallest ideas of any man I ever met," was, perhaps, the severest retort he ever uttered; but

history has considerately sheltered the identity of the victim.

Wit and ridicule were Lincoln's weapons of offense and defense, and he probably laughed more jury cases out of court than any other man who practised at the bar.

"I once heard Mr. Lincoln defend a man in Bloomington against a charge of passing counterfeit money," Vice-President Stevenson told the writer. "There was a pretty clear case against the accused, but when the chief witness for the people took the stand, he stated that his name was J. Parker Green, and Lincoln reverted to this the moment he rose to cross-examine. *Why J. Parker Green? . . . What did the J. stand for? . . . John? . . . Well, why did n't the witness call himself John P. Green? . . . That was his name, was n't it? . . . Well, what was the reason he did not wish to be known by his right name? . . . Did J. Parker Green have anything to conceal; and if not, why did J. Parker Green part his name in that way?* And so on. Of course the whole examination was farcical," Mr. Stevenson continued, "but there was something irresistibly

funny in the varying tones and inflections of Mr. Lincoln's voice as he rang the changes upon the man's name; and at the recess the very boys in the street took it up as a slogan and shouted 'J. Parker Green!' all over the town. Moreover, there was something in Lincoln's way of intoning his questions which made me suspicious of the witness, and to this day I have never been able to rid my mind of the absurd impression that there was something not quite right about J. Parker Green. It was all nonsense, of course; but the jury must have been affected as I was, for Green was discredited and the defendant went free."

XX

THE CROSS-EXAMINER

THERE were no official shorthand writers in the courts while Lincoln practised,[1] and the lawyers took their own notes of the testimony during the trial; and these, together with such memoranda as the judge entered on his minutes, formed the data for the record. Lincoln himself, however, rarely took any notes, claiming that it distracted his attention; and as his memory was excellent and his reputation for honesty well established, he experienced no difficulty in supporting his version of what happened at the trial when the records were necessary for the appellate courts.[2]

[1] The Hon. Robert R. Hitt, the distinguished representative from Illinois in Congress, advised the writer that "in 1858, at the time of the Lincoln-Douglas debates, I knew of no other shorthand writer residing in Illinois. There were no court shorthand writers or official stenographers in the State, and no provision of law for anything of the kind."

[2] In making up an appellate record in those days, each lawyer stated the substance of what he thought the testimony had been, and the judge supplemented or corrected the two versions and certified the result to the higher court.

None of the bar ever attempted, however, to secure a verbatim report of the questions and answers, and therefore it is impossible to obtain any official illustrations of Lincoln's methods of handling witnesses. There is abundant proof, nevertheless, of his skill in this particular, and it is conceded by all his contemporaries that as a cross-examiner he had no equal at the bar.

"In the trial of a case he moved cautiously," said Judge Weldon, "and never examined or cross-examined witnesses to the detriment of his own side. If the witness told the truth, he was safe from his attacks; but woe betide the unlucky or dishonest individual who suppressed the truth or colored it."

Another of his associates testifies that he would not tolerate the evasions of his own witnesses when they were being questioned by his opponents, and more than once he openly reproved his own clients for dodging and sulking in the witness-chair.

"He was a great cross-examiner," Mr. James Ewing remarked to the writer, "in that he never asked an unnecessary question. He knew when and where to stop with a witness, and when a man has learned that he is entitled to take rank as an expert questioner."

"I shall never forget my experience with him," observed Mr. James Hoblit of Logan County, Illinois, one of the few men now living who ever faced him in the witness-chair. "I was subpœnaed in a case brought by one Paullin against my uncle, and I knew too much about the matter in dispute for my uncle's good. The case was not of vital importance, but it seemed very serious to me, for I was a mere boy at the time. Mr. Paullin had owned a bull which was continually raiding his neighbor's corn, and one day my uncle ordered his boys to drive the animal out of his fields, and not to use it too gently, either. Well, the boys obeyed the orders only too literally, for one of them harpooned the bull with a pitchfork, injuring it permanently, and I saw enough of the occurrence to make me a dangerous witness.

"The result was that Paullin sued my uncle, the boys were indicted for malicious mischief, Mr. Lincoln was retained by the plaintiff, who was determined to make an example of somebody, and I was subpœnaed as a witness. My testimony was, of course, of the highest possible importance, because the plaintiff could n't make my cousins testify, and I had every reason to want

to forget what I had seen, and though pretty frightened, I determined, when I took the stand, to say as little as possible. Well, as soon as I told Mr. Lincoln my full name he became very much interested, asking me if I was n't some relative of his old friend John Hoblit who kept the half-way house between Springfield and Bloomington; and when I answered that he was my grandfather, Mr. Lincoln grew very friendly, plying me with all sorts of questions about family matters, which put me completely at my ease, and before I knew what was happening, I had forgotten to be hostile and he had the whole story. After the trial he met me outside the court-room and stopped to tell me that he knew I had n't wanted to say anything against my people, but that though he sympathized with me, I had acted rightly and no one could criticize me for what I had done. The whole matter was afterward adjusted, but I never forgot his friendly and encouraging words at a time when I needed sympathy and consolation."

Cross-examination makes greater demands upon a lawyer than any other phase of trial work, and it has been rightly termed an art. To succeed in it the practitioner must be versed in the

rules of evidence; he must be familiar with all the facts in his case, and keep them continually in his mind; he must think logically, be far-sighted, tactful, and a keen judge of human nature. All these qualities Lincoln possessed to an unusual degree, and, in addition, he exerted a remarkable personal influence upon every one with whom he came into contact. Men who were openly opposed to him became fascinated when they met him, and few ever retained their hostility. This result was effected without any seeming effort on his part, and Lincoln was singularly free from all the arts and graces, natural or cultivated, which are usually associated with personal charm. He was direct, simple, and unaffectedly frank, and the conclusion is irresistible that he was endowed with psychic qualities of extraordinary power. Nothing except this can properly explain his wonderful control of witnesses and juries, and every experienced lawyer knows that strong individuality, commanding presence, and personal magnetism are essential factors in the equipment of all great cross-examiners. More than one man has described the effect of Lincoln's eyes by saying that they appeared to look directly *through* whatever he concentrated his

gaze upon, and it is well known that during his frequent fits of abstraction he became absolutely oblivious to the bustle and confusion of the court-room and saw nothing of the scene before him.

But although there was something mysterious in Lincoln's personality which played an important part in his success as a cross-examiner, his mastery of the art was acquired in the only way it can be acquired, and that is by constant, daily practice in the courts. He was a natural logician, and by slow degrees he cultivated this gift until he could detect faulty reasoning, no matter how skilfully it was disguised. In almost every instance he saw the logical conclusion of an answer long before it dawned upon the witness, and was thus able to lead him without appearing to do so. It will be seen in another chapter how effectively he once employed this art.

Mr. Arnold, comparing Douglas and Lincoln, says: "Both were strong jury lawyers. Lincoln was, on the whole, the strongest we ever had in Illinois. Both were distinguished for their ability in seizing and bringing out distinctly and clearly the real points in a case. Both were happy in the examination of witnesses, but I think

Lincoln was the stronger of the two in cross-examination."

This is valuable testimony, coming as it does from a professional associate of many years' standing; and a careful reading of the great debates demonstrates that Lincoln was not only a more effective questioner, but in every other way a better-equipped lawyer than Douglas. Indeed, it was Douglas's *errors of law* quite as much as his errors of statesmanship which cost him the Presidency.

Lincoln's skill as a cross-examiner effected some of his most dramatic triumphs, and his *cause célèbre* is undoubtedly the trial of William Armstrong for the killing of James Metzker, where his talents in this particular saved the day for his client.

The story of this now famous case has often been recounted, and its dramatic features have been skilfully utilized in at least one volume of fiction,[1] but the distortions wrought by many versions justify a complete retelling of the facts gathered di ectly from the records themselves and from an interview with Judge Lyman Lacey, who was associated with Mr. Walker, the defend-

[1] See Edward Eggleston's "The Graysons."

ant's attorney, and is still living in Mason County.

In the days when Lincoln was working as a clerk in Offutt's New Salem store he had won the respect and admiration of the rough element in the community by flooring one Jack Armstrong, the leader of the Clary's Grove boys, in a wrestling-match, and the fallen champion instantly became his stanch friend and ally. Armstrong afterward married, and Lincoln, who knew his wife, could not resist her appeal when she sought him out during the great debate with Douglas and begged him to come to the rescue of her son, who was charged with murder and was on the point of being tried. Mr. William Walker, a skilful lawyer, had been retained for the defense, but as the case against his client was exceedingly serious, he was only too willing to have expert assistance, and Lincoln therefore laid aside his pressing political engagements and plunged at once into the trial of the case.

The defendant, William Armstrong, popularly known as "Duff," was a youth of bad habits, and on August 29, 1857, while under the influence of liquor, he had quarreled with another young man by the name of Metzker, and had

beaten him severely. This occurred during the afternoon; but when the quarrel was renewed late at night, one Norris joined in the fracas, and, between him and Armstrong, Metzker received injuries which resulted in his death. Popular indignation against the accused was so violent in Mason County that Armstrong's lawyer moved for a change of venue, claiming that his client could not receive a fair trial in the local court; and the judge was apparently of the same opinion, for he removed the case to Beardstown, the county-seat of Cass County. Meanwhile Norris, the other defendant, was brought to trial before the home tribunal, where it was clearly shown that he had assaulted the deceased with a cart-rung; but it was not demonstrated that his blows had caused death, and the body showed other wounds not necessarily made by such a weapon. Under these circumstances the jury brought in a verdict of manslaughter, and the defendant was sentenced to eight years' imprisonment.

This was the situation when Hannah Armstrong appealed to Lincoln; but despite the gloomy outlook, he took a hopeful view and reassured the anxious mother. Not only were the

facts against his client, but the Illinois law of that day did not permit a defendant to testify in his own behalf, so that Armstrong was precluded from giving his own version of the story and denying the testimony of the accusing witnesses. The assistant prosecuting attorney was Mr. J. Henry Shaw, and Caleb J. Dillworth, another able lawyer, was associated with him, but Lincoln scored against them at the start by securing a jury of young men whose average age was not over twenty-five. Most of the witnesses were also young, and these Lincoln handled so skilfully on cross-examination that their testimony did not bear heavily against the accused. Almost all of them were from the neighborhood of New Salem, and whenever the examiner heard a familiar name he quickly took advantage of the opening to let the witness know that he was familiar with his home, knew his family, and wished to be his friend. These tactics succeeded admirably, and no very damaging testimony was elicited until a man by the name of Allen took the stand. This witness, however, swore that he actually saw the defendant strike the fatal blow with a slungshot or some such weapon; and Lincoln, pressing him closely, forced him to locate

the hour of the assault as about eleven at night, and then demanded that he inform the jury how he had managed to see so clearly at that time of night. "By the moonlight," answered the witness, promptly. "Well, was there light enough to see everything that happened?" persisted the examiner. The witness responded "that the moon was about in the same place that the sun would be at ten o'clock in the morning and was almost full,[1] and the moment the words were out of his mouth the cross-examiner confronted him with a calendar showing that the moon, which at its best was only slightly past its first quarter on August 29, had afforded practically no light at eleven o'clock and that it had absolutely set at seven minutes after midnight. This was the turning-point in the case, and from that moment Lincoln carried everything before him, securing an acquittal of the defendant after a powerful address to the jury.

There is a singular myth connected with this case, to the effect that Mr. Lincoln played a trick on the jurors by substituting an old calendar for the one for the year of the

[1]This is the witness's answer as reported by Mr. Henry Shaw, the District Attorney.

murder, and virtually manufacturing the testimony which carried the day. How such a rumor started no one can say, but it goes far to prove the impossibility of ever successfully refuting a lie; for though repeatedly exposed, it still persists on the Illinois circuit to-day. The facts are, of course, that the calendar for August 29, 1857, shows the position of the moon precisely as Lincoln claimed it,[1] and every one who understands anything of trial work knows that an important exhibit of that sort would be examined by the judge and the opposing lawyers as well as by the jury, besides being marked for identification if submitted in evidence. Therefore Lincoln would have been a fool, as well as a disreputable trickster, if he had resorted to the asinine practice outlined in this silly tale, which practically disproves itself.

[1] In September, 1905, the United States Naval Observatory, answering the writer's inquiry, reported that on August 29-30, 1857, the moon set at 7 minutes 5 seconds after midnight, and at culmination, during the preceding twenty-four hours, "was 2 days 9 hours and 46.1 minutes past the first quarter."

XXI

LEGAL ETHICS

DESPITE his success in the Armstrong and other capital cases, Lincoln was not well qualified for work of this character, and he avoided the practice of criminal law as far as possible.

There has long been a tradition in the old Eighth Illinois Circuit that he once defended a murderer who was convicted, sentenced, and hanged; but as capital cases resulting in conviction are almost invariably appealed to the highest tribunal, and as the Supreme Court reports do not record any murder case with which he was associated, the rumor has been supposed to be without foundation. There is, however, a paper in Lincoln's handwriting on file in Hancock County showing that he was associated with the defense of one William Fraim, who was tried and convicted April 25th, 1839, for the murder of a man named William Neathammer and subsequently hanged May 18th of the same year, and

this is doubtless the hitherto unlocated cause of circuit memories.[1]

Although he did not seek criminal practice, Lincoln did nevertheless occasionally appear in homicide cases,[2] and his defense of "Peachy" Harrison, grandson of his old political rival Peter Cartwright, the circuit-riding preacher, though less dramatic than the Armstrong case, is perhaps one of the best illustrations of his remarkable power with a jury.

Young Harrison and a youth by the name of Greek Crafton quarreled over a question of politics, and a fight ensued in which Crafton received a knife-thrust resulting in his death. The case attracted considerable attention, and both the prosecution and the defense were ably represented, Maj. Gen. John M. Palmer, afterward Governor of Illinois, and John A. McClernand,

[1] The writer is indebted to the courtesy of Mr. Thos. F. Dunn, Ex-Circuit Court Clerk of Hancock County, for these facts and the opportunity of examining the original papers connected therewith.

[2] Lincoln acted as prosecutor in at least one murder case. He was appointed by the court to conduct the people's case against one Wyant, who was represented by Leonard Swett, and a battle royal followed between the two lawyers which is vividly remembered by many of the residents of Bloomington, Illinois, with whom the writer talked. After a trial lasting many days the jurors brought in an irregular verdict, which virtually committed the defendant to the lunatic asylum, but finally they acquitted him under what was equivalent to a court direction.

who also became a distinguished general in the Civil War, appearing for the people, and Lincoln, Herndon, Judge Logan, and Shelby M. Cullom, the present United States senator and ex-Governor of Illinois, being retained for the defendant. There was some conflict of testimony over the facts leading up to the killing, but the defense did not make much impression until Lincoln put the defendant's grandfather, Peter Cartwright, on the stand, and with touching solicitude drew from the old man the story of his last interview with the deceased, in which he expressed his reconciliation with his assailant, whom he prayed would not be held responsible for his death. Then, with virtually no facts to support his plea, Lincoln began his address to the jury, exhorting them to heed the dying victim's words and abstain from visiting further sorrow and affliction upon the venerable preacher who had delivered them a message almost from the other world; and so powerfully did he move his auditors that the efforts of the prosecution were unavailing and a verdict of acquittal followed.

Lincoln was not considered a formidable opponent in the criminal courts, however, unless he

thoroughly believed in the justice of his cause. Mr. Whitney reports that on one occasion when he was defending a man charged with manslaughter, the testimony demonstrated that his client ought to have been indicted for murder in the first degree, whereupon Lincoln instantly lost all interest in the case. He did not actually abandon the defense, but he could not coöperate effectively with his associates, who were endeavoring to acquit the defendant, and one of them states that when Lincoln addressed the jurors he disparaged the effort which had been made to work upon their feelings and confined himself to a strictly professional argument along conventional lines, with the result that the defendant was found guilty and sentenced to three years' imprisonment. This fairly disgusted Mr. Whitney, who was anxious to have the murderer acquitted, and he does not hesitate to characterize Mr. Lincoln's conduct as "atrocious."

But Lincoln was guilty of many other "atrocities" of the same character. It is well known that he virtually abandoned his client in another capital case when he discovered that he was defending a guilty man. "You speak to the jury," he said to Leonard Swett, his associate counsel;

"if I say a word, they will see from my face that the man is guilty and convict him." On another occasion, when it developed that his client had indulged in fraudulent practices, he walked out of the court-room and refused to continue the case. The judge sent a messenger, directing him to return, but he positively declined. "Tell the judge that my hands are dirty and I 've gone away to wash them," was his disgusted response.

This conduct in the court-room was in entire keeping with his office practice, where he declined time and again to undertake doubtful causes, discouraged litigation, and discountenanced sharp practices.

"*Yes,*" Mr. Herndon reports him as advising a client, "*we can doubtless gain your case for you; we can set a whole neighborhood at loggerheads; we can distress a widowed mother and her six fatherless children, and thereby get for you six hundred dollars to which you seem to have a legal claim, but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you. You must remember, however, that some things legally right are not morally right. We shall not take your case, but we will give you a little advice for which we will charge you*

nothing. You seem to be a sprightly, energetic man. We would advise you to try your hand at making six hundred dollars in some other way."

At another time he was very anxious to secure delay in a certain case, and Herndon drew up a dilatory plea which would effectually postpone the trial for at least one term of court. It was the sort of thing which is condoned in almost every law office, but Lincoln repudiated it the moment it came to his notice. "Is this founded on fact?" he demanded of his partner, and Herndon was obliged to admit that it was not, urging, however, that it would save the interests of their client, which would otherwise be imperiled. But Lincoln was not to be persuaded. "You know it is a sham," he answered, "and a sham is very often but another name for a lie. Don't let it go on record. The cursed thing may come staring us in the face long after this suit has been forgotten." Herndon complied with this instruction and the paper was withdrawn.

These and similar actions have been characterized by one highly respectable authority as "admittedly detracting from Lincoln's character as a lawyer," but no member of the profession who has the best interests of his calling at heart will

accept such a conclusion. On the contrary, it is because he had the courage and character to uphold the highest standards of the law in daily practice that Lincoln is entitled to a place in the foremost rank of the profession. He lived its ideals and showed them to be practical, and his example gives inspiration and encouragement to thousands of practitioners who believe that those things which detract from the character of the man detract from the character of the lawyer.

Some of Lincoln's biographers apparently disregard his legal history because he never succeeded in making much more than a bare living from his practice, and they seemingly conclude from this fact that he is not entitled to high rank in the profession. This view, of course, misses one of the vital points in Lincoln's character both as a man and a lawyer, for he placed principle beyond price and illustrated the maxim that it is "better to make a life than a living."

Before he had won his place at the bar he had stated his theories on the subject. *"The matter of fees is important, far beyond the mere question of bread and butter involved,"* he wrote in his notes for a law lecture. *"Properly attended to, fuller justice is done to both lawyer and client.*

An exorbitant fee should never be charged. As a general rule, never take your whole fee in advance, nor any more than a small retainer. When fully paid beforehand, you are more than a common mortal if you can feel the same interest in the case as if something was still in prospect for you as well as for your client."

This was largely the advice of a theorist; but Lincoln carried it into practice so completely that the profession was scandalized. Indeed, one of his associates relates an incident where Lincoln's scruples proved exceedingly embarrassing. He had been retained to oppose the removal of a conservator, or legal guardian, of a woman whose mind was deranged. The estate involved about ten thousand dollars, and the man who was attacking the conservator evidently desired to have him removed so that he could marry the lunatic and obtain possession of her funds. Lincoln made short work of this nefarious business; but when he learned that the attorney who had retained him had charged two hundred and fifty dollars for their joint services, he refused to take any share of the money until the fee had been reduced to what he deemed a reasonable amount.

When Judge Davis heard of this, he was

highly indignant. "Lincoln, you are impoverishing the bar by your picayune charges," he is said to have exclaimed; and the lawyers thereupon tried the offender by what was called on the circuit an "orgmathorical" (mock) court, but he stood trial, and being found guilty, paid the fine with the utmost good-nature.

Judge Weldon describes another episode which perfectly illustrates Lincoln's attitude toward more than one aspect of the law. A Portuguese by the name of Dungee married a girl named Spencer, and later there was a family quarrel between the bridegroom and his relatives-in-law which became so bitter that the girl's brother referred to her husband as "a nigger," and followed this up by describing him as "a nigger married to a white woman." Dungee thereupon retained Lincoln and sued his brother-in-law for slander. The defendant was represented by Mr. Moore and Judge Weldon, and when the case was moved for trial in Clinton County, Judge Weldon demurred to Lincoln's complaint on technical grounds, and the demurrer was sustained. Lincoln was not too pleased that his papers were rejected as faulty, but he redrew them, merely remarking to his op-

ponents, with significant determination, "Now I *will* beat you!" When the case reappeared for a hearing, he was as good as his word, attacking the defendant with great severity for his scandalous utterances.

After a two days' battle, the jury decided for the plaintiff, and the verdict amounted to what was a large sum in those days. But although he had won the fight, Lincoln was not satisfied with the result. *"As a peacemaker the lawyer has a superior opportunity of being a good man,"* he had written as a theorist, and in practice he was still able to see that money damages do not heal family feuds. Thereupon he persuaded his client not to insist upon the payment of the verdict, and the matter was finally adjusted by the defendant agreeing to pay the costs and lawyers' fees. Lincoln stipulated that his adversaries should fix the amount of his fee; but when they declined to do so, he remarked: *"Well gentlemen, don't you think I have honestly earned twenty-five dollars?"*

Certainly there are good grounds for criticizing Lincoln as a business man, and no one will dispute the charge that he was utterly lacking in all the essentials of commercial genius.

XXII

LEGAL REPUTATION

ONE of Lincoln's latest biographers, in expressing admiration for his statesmanship, enumerates his disadvantages, and asserts that before he went to Washington "he had had no experience in diplomacy and statesmanship; as an attorney he had dealt only with local and State statutes; he had never argued a case in the Supreme Court and he had never studied international law."

There is very little inspiration in the career of a man whose achievements are inexplicable or whose natural endowments are the despair of ordinary mortals, and eulogies which tend to rob Lincoln of human interest and incentive are usually based on misinformation.

Certainly the wondering tribute above quoted displays no convincing acquaintance with the facts, for it entirely misrepresents the extent and value of Lincoln's legal education. His three and twenty years' active practice in the courts

supplied him with the best of diplomatic training. It did not, of course, familiarize him with the etiquette and forms of international relations, but it gave him a thorough knowledge of men and taught him "to see behind the smiling mask of craft." Much the same experience qualified an Ex-Secretary of State to cope successfully with the most skilful diplomats of Europe during the Spanish War, and to confer high distinction upon our modern statesmanship.

Again, Lincoln's knowledge of law was not confined to local or State statutes. He was acquainted with the great principles of the English common law, and if he was not familiar with "the waves and tides of legal authority," he was still well grounded in all the fundamentals of his profession, and it would be absurd to deny him recognition as a lawyer merely because he "never had had a case in the United States Supreme Court." But even in this small particular the biographer is at fault, for Lincoln did have a case before that tribunal, known as Lewis *v.* Lewis[1] (reported in 7 Howard, 776), and the

[1]It is an interesting fact that Judge Taney, of Dred Scott fame, delivered the prevailing opinion of the court in this case. Another of Lincoln's cases in the United States Supreme Court is Forsythe *v.* Reynolds, 14 Law. Ed. 729.

[redacted] Court of the United States

December Term A.D. 1848

Lewis for use of Longworth
vs
Lewis adm'r. of Broadwell } On division of opinion from the District of Illinois

History of the case, and the Statute bearing on it—

Date of deed of trust March 12. 1819
" of conveyance June 1825
" of act of limitation Feb. 10 1827
" of Broadwell's death 1827
" of Cromwell adm'r July 9 1827
" of Cromwell's death July — 1836
" of repeal of saving Feb 11 1837
" of Lewis' adm'r Jan 19 1843
" of commencement of suit 1845

Declaration sets out covenants of seizen and of warranty and assigns breaches on both—
Plea (among other) that action does not accrue in 20 years.
Replication, that from July 1836 to Jan 19. 1843 there was no administration of Broadwell. and
Demurrer to Replication—
The opinion of the Judges were opposed on the following

From the collection of the Hon. Robert T. Lincoln

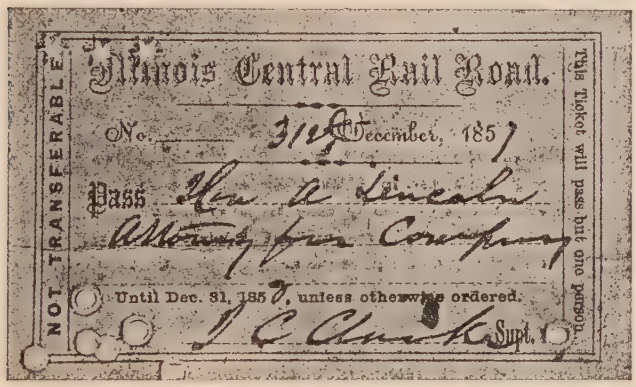
Facsimile of a part of Lincoln's memorandum brief in the case of Lewis *v.* Lewis in the United States Supreme Court

original of his brief in that action is in existence to-day

It would not be difficult to quote passages from other biographers in proof of the fact that Lincoln's work as a lawyer has never been scrutinized with any care, and doubtless the trivial anecdotes concerning his life on the circuit which have done duty for the last forty-five years have contributed to the general misconception of his professional standing. The once funny story about "the pig-and-crooked-fence" case, "the old-sledge-and-seven-up" trial, and similar time-worn yarns, have been accepted as characterizing his legal experience; and under such circumstances it is not at all surprising that serious historians have regarded his legal training as a negligible quantity. Fortunately, however, the records are accessible, and they speak very largely for themselves.

In his twenty-three years at the bar, Lincoln had no less than one hundred and seventy-two cases before the highest court of Illinois, a record unsurpassed by his contemporaries; he appeared before the United States circuit and district courts with great frequency; he was the most in-

defatigable attendant on the Eighth Circuit and tried more cases than any other member of that bar; he was attorney for the Illinois Central Railroad, the greatest corporation in the State, and one which doubtless had its choice of legal


NOT TRANSFERABLE
Illinois Central Rail Road.
No. 312 December, 185 7
This Ticket will pass but one person.
Pass Hon A Lincoln
Attorney for Company
Until Dec. 31, 185 8, unless otherwise ordered.
J C Clark Supt.

Lincoln's pass as counsel for the Illinois Central Railroad

talent; he was also counsel for the Rock Island Railroad, and other corporations and individuals[1] with important legal interests at stake; he was sought as legal arbitrator in the great corporation

[1]Mr. W. Thomas, a lawyer who retained Mr. Lincoln as counsel in an important litigation, wrote him in December, 1859, as follows: "Judge Caton has the Record and he told me that he had not decided what to do and that he was in doubt, etc. I want you and Logan to assist me in presenting this case in such form as to *undoubt* the Judge. I ought to and must gain this case. If you can be the means of success you will almost bring me under obligation to support the Black Republicans."

(From original letter in possession of General Orendorff.)

litigations of Illinois[1] and he tried some of the most notable cases recorded in the courts of that State.

Perhaps the most important cause he ever handled was that known as The Illinois Central Railroad *v.* McLean County, reported in 17 Illinois, 291.[2] This was an action brought against McLean County to restrain the collection of certain taxes alleged to be due from the railroad, growing out of the fact that the Illinois legislature had granted the corporation exemption from all State taxes on condition that it pay seven per cent. of its gross earnings into the State treasury. The county authorities, however, claimed that this provision did not preclude them from taxing so much of the railroad's property

[1]The following telegram, original of which is in General Orendorff's collection, speaks for itself:

"Chicago, Oct. 14, 1853.

"To Abraham Lincoln,
"Springfield, Ill.

"Can you come here immediately and act as arbitrator in the crossing case between the Illinois Central and Northern Indiana R. R. Companies if you should be appointed? Answer and say yes if possible.

(Signed) "J. F. Joy."

[2]Lincoln was opposed in this noted case by both his old law partners, Judge Logan and John T. Stuart. The decision has been cited at least twenty-three times by judges of other courts.

"Can there be any valid pre-emption on sections of land, alternate to the sections granted to the Illinois Central Railroad?"

My opinion is asked on the above question—

"An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights" Approved Sep. 4. 1841, contains the first permanent, or prospective pre-emption law—

5. U. S. Stat. at Large 453.

Sections ten, eleven, twelve, thirteen, fourteen, and fifteen, of this act, relate exclusively to pre-emptions— In Section ten it is provided that "no sections of land reserved to the United States, alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement, shall be liable to entry, under, and by virtue of the provisions of this act."

This act continues to be our general pre-emption law, up to the present time— and, although some supplementary provision has afterwards been enacted, the above provision, in section ten, remains untouched up to Sep. 20. 1850, when the Central Railroad grant was made—

The latter act, preserved existing pre-emptions, on the even sections, granted generally, for the Road; but made no mention of pre-emptions, as to the odd sections reserved to the United States—

9 Stat. at Large 466.

August 2. 1852 "An Act to protect actual Settlers upon the Lands on the Line of the Central Railroad and Branches, by granting Pre-emption Rights thereto", was passed—

By this act, pre-emptions were given on these re-

From General Alfred Orendorff's collection

Facsimile of the first page of Lincoln's opinion on a question involving the construction of the charter of the Illinois Central Railroad

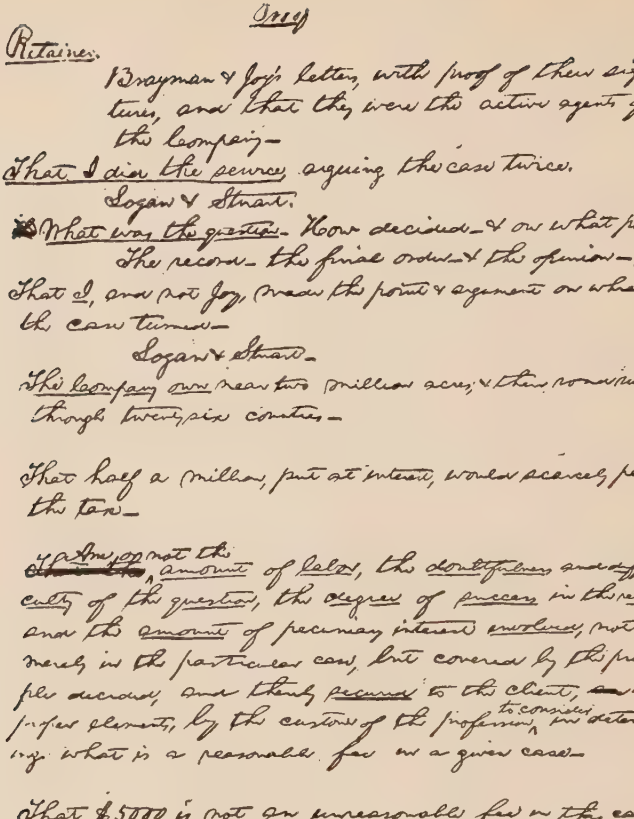
as lay within their respective jurisdictions, and a great legal battle ensued. The issue was a vital one for the corporation, for the claims of the county threatened it with bankruptcy, and railroading in Illinois was then in its experimental stage. Lincoln conducted the defense with rare skill but lost in the first court. He instantly appealed the case to the Supreme Court, however, and there it was twice argued before a final decision was recorded in favor of the road at the end of two years' litigation.

This celebrated case was provocative of another, for the Illinois Central declined to pay Lincoln's bill for services rendered in the tax matter without suit, and he brought an action in the Supreme Court for $5,000 and costs. On the trial all the leaders of the Illinois bar—O. H. Browning, N. B. Judd, Isaac Arnold, Grant Goodrich, Archibald Williams, Judge Norman Purple, Judge Logan and Robert Blackwell—joined in a written statement which was presented to the court, certifying that Lincoln's bill was reasonable and the jury promptly brought in a verdict for the full amount.

It is interesting to note Lincoln's attitude and conduct in this litigation. When the case was

first called for trial, no one appeared on behalf of the railroad, and judgment was awarded to the plaintiff by default: nevertheless Lincoln agreed that the case might be reopened, thus allowing the defendant to have its day in court without penalty; and when the verdict was rendered, he agreed to have it set aside because he had forgotten to introduce proof of two hundred dollars which had been given him as a retainer, and the final verdict was recorded at forty-eight hundred dollars and costs. Incidentally it may be mentioned that the services for which Lincoln was obliged to sue would to-day cost the corporation not *five,* but *fifty,* thousand dollars.

It is only fair to state that within the last few years the Illinois Central Railroad has issued an elaborate pamphlet giving its side of this case, and undertaking to show that Lincoln's bill was not certified out of deference to the board of directors, who might have censured the local officials for voluntarily paying so large a charge against their company, and that the trial was merely a formality. Lincoln's unusually careful brief on the law and the facts, however, does not bear out the contention that the litigation was friendly, and there are other facts which tend to



Retainer.

Brayman & Joy's letter, with proof of their signatures, and that they were the active agents of the company—

That I did the service, arguing the case twice.

Logan & Stuart.

What was the question. How decided—& on what point.

The record—the final order—& the opinion—

That I, and not Joy, made the point & argument on which the case turned—

Logan & Stuart.

The company own near two million acres, & their road runs through twenty-six counties—

That half a million, put at interest, would scarcely pay the tax—

[illegible], not the amount of labor, the difficulties and difficulty of the question, the degree of success in the result, and the amount of pecuniary interest involved, must merely in the particular case, but covered by the principle decided, and thereby secured to the client, are all proper elements, by the custom of the profession, to be considered in determining what is a reasonable fee in a given case—

That $5000 is not an unreasonable fee in the case—

From General Alfred Orendorff's collection

Facsimile of part of Lincoln's trial brief in his case against the Illinois Central Railroad, showing his careful preparation of the issues

indicate that the corporation's treatment of its distinguished counsel was not as handsome as the publication in which it now explains its action.[1]

[1]For more extended reference to this matter see Appendix.

While Lincoln was traveling the circuit with Judge Davis, he was retained in the now famous case of McCormick *v.* Manny,[1] an action brought by the plaintiff, who owned valuable patents for reaping-machines, to enjoin the defendant from manufacturing similar contrivances and to recover four hundred thousand dollars damages for infringements. Lincoln was engaged by a Mr. Watson, who was in charge of the defense, and the original plan was to have him conduct the forensic part of the trial. Mr. E. H. Dickerson, a well-known patent solicitor, had been retained by McCormick to make the technical argument, and Reverdy Johnson, the noted Baltimore advocate, and one of the most distinguished lawyers in the country, was to oppose Lincoln, who was naturally very anxious to measure himself against a man of such wide reputation. But Mr. Watson also saw fit to retain Mr. Harding, a patent solicitor, and Edwin M. Stanton, who then resided at Pittsburg, but who was well and favorably known in Cincinnati, where the trial was to take place, and whose personal influence with the court was relied upon to offset the great reputation of Reverdy Johnson.

[1] Reported in McLean's U. S. Reports, vol. vi, p. 539.

Correll v others } Issue at law to establish a
vs } Will –
Mr. Flannel v others }

The widow of the Testator is not a competent witness –
11 Humph. 565 –

The declarations of the Testator long before his sickness, to make such a Will, as he finally did, are admissable, and weighty evidence ~~of~~ in support of the Will –

17. Ala. 55
5. Strob. 167
7. Humph 320.
6. Ala. 514.
6. Georgia 324.

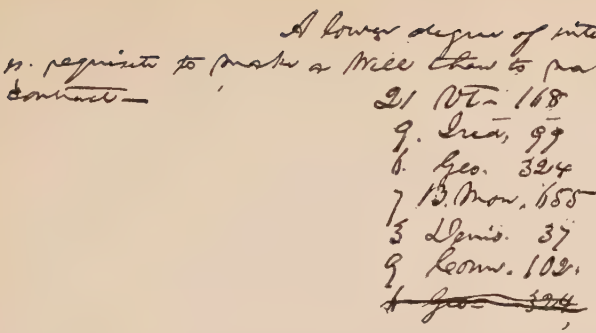
The mere opinions of witnesses, other than the subscribing witnesses, as to the sanity of the Testator, are not admissable –

17. Gill 10.
12. Penn. S. R. 27
6. Geo. 324
13. Ala 18.

Where an influence is acquired over a Testator by long offices or permanent intercourse with friends, the will made under such influence, would not be set aside.

2. New Jer. 117.
5. Strob. 167
3. Strob 44 – 552.
6. Georgia 324
3 Davis 37.
1. Rich. 80.
Cheeves 37.
2 J. J. Marsh. 340
3 J. J. R. 267

1 Humph 454
2 Do. 375



From General Alfred Orendorff's collection

A memorandum brief in Lincoln's handwriting opposing an attempt to break a will and showing a wide range of authorities

When the lawyers met in Cincinnati, it was decided in consultation that only two counsel should be heard on each side, and that the defense should be represented by Harding and Stanton. This was undoubtedly a bitter disappointment to Lincoln, who had carefully prepared himself to make the argument, and who had never had an equal opportunity of meeting a lawyer of national reputation. He accepted the decision as gracefully as possible, however, furnishing Mr. Harding with all the notes and other material he had collected for the argument, and had Stanton treated him with consideration, the situation would have been freed of all embarrassment. But Stanton was utterly devoid of tact, and took no trouble to conceal his contempt for his Illinois associate. "Where did that long-armed creature come from, and what does he ex-

pect to do in this case?" he inquired of the other lawyers, and this and similarly offensive comments reached Lincoln's ears. Discourtesy was absolutely foreign to his nature, and it is no wonder that it embittered and disgusted him. Yet the greatness of the man enabled him to suppress his personal resentment, and when the nation had need of Stanton's undoubted talents, Lincoln laid aside his own feelings and tolerated his overbearing Secretary until he conquered him with kindness.

Lincoln was recognized as a good jury lawyer long before he won any reputation in other lines of legal work. Judge Logan first noted his effectiveness in arguments addressed to the bench; but despite his excellent record in the Supreme Court, where he won a large majority of his cases, he did not gain any marked recognition as a court lawyer until well into the fifties. He was, however, eminently qualified for work of this character. His power of analysis, pitiless logic, and comprehensive mental grasp of large subjects all combined to make him a formidable opponent in legal discussions and a powerful influence with the court. He could split the ears of the groundlings when passionate appeals were

in order, but he was not naturally emotional; on the contrary, he was cool, calm, and temperate in word, thought, and action. Patent cases, with their nice problems in mechanics and engineering, interested him intensely, and more than once he constructed models with his own hands to aid him in trying actions of this sort which demanded close reasoning and afforded him practical experience in exact scientific deductions.[1]

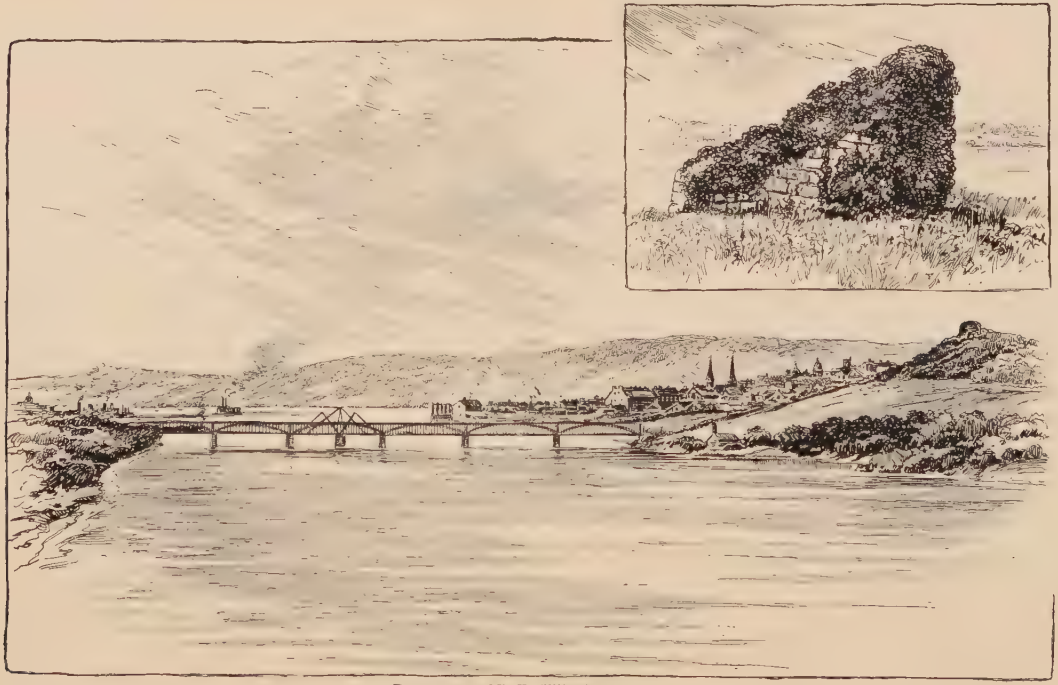
He took no interest in the ordinary legal abstractions discussed in court-rooms, and the quibbles of practice bored him; but when there was any real principle involved in a question of law he studied it with the closest attention, and his arguments were usually so original that they presented the subject in a new light, no matter how often it had been discussed. Thus, when the steamboats and the railroads were struggling for commercial supremacy in the Mississippi valley, and the right to bridge the river was in dispute, new and vital questions of law arose, which he handled in a masterful manner on behalf of the Rock Island Railroad. In one of these bridge cases which he tried in Chicago, a steamboat had

[1] It will be remembered that Lincoln himself was something of an inventor and obtained a mechanical patent, the model for which is preserved in Washington.

struck a pier of the railroad's bridge, and its owners brought a suit for damages involving propositions never before presented to the courts and requiring clear and original thought. Some idea of the bitterness of this contest may be gathered from the fact that the railroad charged the steamboat captain with being bribed to run his vessel against the bridge and thus make a case of obstructing navigation. This accusation was, of course, angrily denied; but when the bridge was accidentally burned, all the river craft gathered at the spot and let their whistles loose in sheer joy at the disaster. Under these circumstances it required a cool head and an even temper to carry the day, and Lincoln was equal to the occasion. His argument, one of his few legal speeches which have been preserved, was reported by the Hon. Robert Hitt, and it demonstrates Lincoln's conspicuous ability in presenting close questions of law, and indicates his notable development as a lawyer.[1]

[1]The writer is indebted to the courtesy of the editors of the Chicago "Tribune" for a full copy of Mr. Hitt's report of this speech. The case was entitled Hurd *et al. v.* Railroad Bridge Co., and it was tried in the United States Circuit Court, Hon. John McLean presiding, September, 1857.

Colonel Peter A. Dey, one of the engineers of the old Mississippi and Missouri Railroad, now living in Iowa, was present at this trial, and advises the writer that "Mr. Lincoln's examination of



By courtesy of B. F. Tillinghast, Esq.

LOWER: Bridge over Mississippi from Rock Island to Davenport, against which the "Effie Afton" struck, resulting in Lincoln's famous Bridge Case.

UPPER: Old pier of first Mississippi bridge at Davenport, burned in the great war between the railroads and steamboats in which Lincoln participated.

Another notable civil cause in which he was engaged was known as the "sand-bar case,"[1] involving certain accretions to the shore of Lake Michigan of vast importance to the Illinois Central Railroad, and his discussion of the law on behalf of his client displayed high ability and resourcefulness.

Much of Lincoln's effectiveness in this class of work was due to his mental independence. Precedents did not make him over-confident, and they never balked him. Back of the recorded adjudication he sought the reason, and if it did not satisfy his mind, he would not accept it. Very few lawyers possess sufficient independence and originality for research of this character, and the average brief, though it often displays great ingenuity in reconciling divergent authorities,

witnesses was very full and no point escaped his notice. I thought he carried it almost to prolixity, but when he came to his argument I changed my opinion. He went over all the details with great minuteness, until court, jury, and spectators were wrought up to the crucial point. Then drawing himself up to his full height, he delivered a peroration that thrilled the court-room and, to the minds of most persons, settled the case."

[1] This case, entitled Johnson *v.* Jones *et al.*, was tried in the United States Circuit Court before Judge Drummond and a jury, in Chicago, March 19, 1860 (about two months before Lincoln's nomination for the Presidency), and it is the last cause of importance in which he appeared. Messrs. Buckner S. Morris, John A. Wills, and Isaac N. Arnold represented the plaintiff, and the defendants' counsel were Abraham Lincoln, Samuel L. Fuller, Van H. Higgins, and John Van Arman.

rarely indicates any really creative thought. Legal argument calls for a higher order of ability than jury work, and it developed Lincoln's talents for logical reasoning until it perfected him to meet and refute the most ingenious debater of his, or possibly of any other, day.

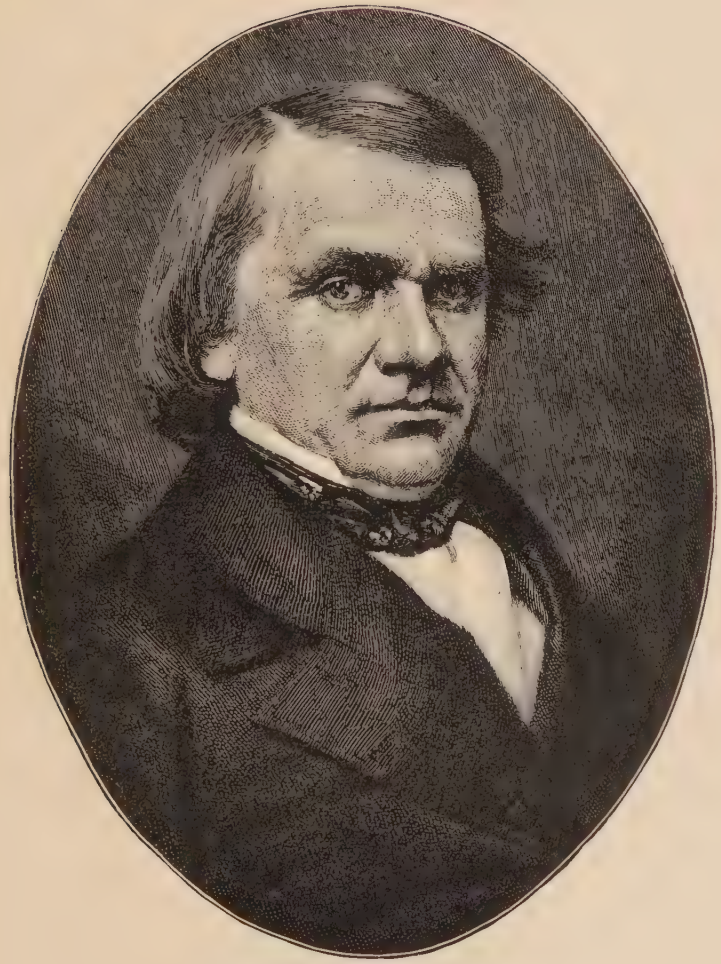
XXIII

LAW IN THE DEBATE

LINCOLN had been practising on the Eighth Circuit for five years when the bill to repeal the Missouri Compromise was introduced in Congress (1854) and during that time he had devoted himself exclusively to the duties of his profession. It is not possible to obtain an accurate record of the number of cases he tried during those five years, for his name was not always entered on the dockets when he acted as counsel for other lawyers, but we know that he argued at least forty appeals in the Supreme Court within that period, and the records of the various county-seats and the testimony of his contemporaries go far to demonstrate that no other lawyer on the circuit, and probably none in the State, had anything like the number and variety of cases which he conducted between 1849 and 1854. It was during the last-named year that the bill was introduced authorizing Congress to organize Kansas and Nebraska

as Territories, and to this bill an amendment was added repealing the Missouri Compromise Act by which slavery was prohibited in the proposed new Territories. Lincoln was attending court on the circuit when this news reached him, and Judge Dickey, one of his fellow-practitioners, who was sharing his room in the local tavern at the time, reports that Lincoln sat on the edge of his bed and discussed the political situation far into the night. At last Dickey fell asleep, but when he awoke in the morning, Lincoln was sitting up in bed, deeply absorbed in thought. "I tell you, Dickey," he observed, as though continuing the argument of the previous evening, "this nation cannot exist half-slave and half-free."

This is probably the first time Lincoln ever used the phrase which was destined to become so famous in later years, and shortly afterward he made his first direct answer to one of Douglas's speeches supporting the Missouri Compromise repeal, and the great duel of debate began. To say that the general public was surprised by the force and effectiveness of Lincoln's attack is to put the matter very mildly. It was fairly astonished, and the most amazed man in the community was probably Judge Douglas himself. He had



Judge Stephen A. Douglas

been absorbed with his duties in the United States Senate for the past seven years, and Lincoln, hard at work with court duties, had virtually disappeared from his view. He had known him as a local practitioner and effective stump-speaker and country attorney, but he was not prepared for the logical, lawyer-like arraignment to which he found himself subjected, and after two more encounters with this new antagonist, he called a truce, proposing that neither he nor Lincoln should make any more speeches during the rest of the fall campaign. To this Lincoln assented, returning to his law practice; and thus ended the first skirmish of what was destined to be one of the most notable debates of history.

Lincoln kept steadily at his court work until the fall of that year, when he decided that to do effective service in the campaign against the extension of slavery he would have to reënter politics, and, being nominated for the Illinois Assembly, he made the necessary canvass, and was elected by a great majority in November, 1854. He had no sooner taken office, however, than he resigned to become a candidate for the United States senatorship; but his selection was frustrated by a combination among the local

politicians, and Lyman Trumbull, another member of the bar, obtained a majority of the votes.

This was in February, 1855, and Lincoln immediately resumed his duties on the circuit. During this and the following year he argued and won the McLean County case for the Illinois Central, prepared and appeared in the McCormick reaper action, argued no less than thirteen appeals in the court of last resort, and otherwise spent the most active year and a half in his entire professional career. Under this daily training in the courts his immense latent powers steadily developed, his mind expanded and his confidence increased, and it was undoubtedly the leader of the Illinois bar who addressed the convention at Bloomington on May 29, 1856. The speech which he delivered on that occasion was lost to the world because he held the audience so spellbound that even the reporters forgot their duties and neglected to take notes; but those who heard it spread the tidings that a new champion had entered the political arena equipped to do battle with all comers. But Lincoln did not feel himself fully prepared, and when the first Republican convention was held at Philadelphia, a few

weeks later, the news that he had received one hundred and ten votes for Vice-President reached him while he was engaged in trial work at Urbana. "It can't be me they are voting for," was his smiling comment; "there 's another great man of the same name somewhere in Massachusetts. It 's probably him."

Important events followed in quick succession, but Lincoln stuck steadily to his court duties. Frémont and Dayton were nominated by the Republicans against Buchanan and Breckinridge; but except for making a number of speeches for Frémont in the fall, Lincoln's professional life went on uninterruptedly. Then Buchanan was elected, and shortly after his inauguration the Supreme Court announced its decision in the Dred Scott case, which, instead of smothering the fires of anti-slavery agitation, added fuel to the flames which burst out in every part of the country.

Meanwhile Lincoln continued active in the courts, gaining greater reputation with every term, and rapidly rounding into shape. From 1856 to 1858 his name appears fifteen times in the Illinois appellate reports, and within the same period he tried the celebrated Wyant

murder case in Bloomington; his leadership of the bar was everywhere acknowledged, and he was in the midst of the most active professional duties when he was nominated by the Illinois Republicans to succeed Douglas, whose term in the Senate was just expiring. As on other occasions when he stood confronted by opportunity, the man responded to the power within him, and he accepted the great task which lay before him with calmness and quiet confidence. His opponent had the prestige of eleven years' senatorial experience, he was recognized as one of the best debaters in the upper house, and acknowledged as a national leader of marvelous personal charm —the ideal of his home constituents, and the probable Presidential candidate of the national Democracy. Lincoln did not underestimate his abilities; but he had taken his measure in their previous tilt, and he did not hesitate to challenge him to debate the issues of the campaign. "Mr. Lincoln is a very amiable gentleman," was Douglas's first reply; but later he yielded to the pressure of his friends, and accepted the challenge.

From the moment of collision it was evident that a great struggle was imminent, and, despite

the applause and flattery of his supporters, Douglas must have known in his heart of hearts that he had at last met his match.

Brilliant and resourceful as he was in popular appeal, his dexterity with the weapons of debate was more than offset by Lincoln's better knowledge of law and his greater familiarity with legal argument, and the contest hinged largely upon the effect of the Dred Scott case as decided by the Supreme Court.

Dred Scott, it will be remembered, was a negro whose Missouri master, after a short residence in Illinois, had moved into what was then Wisconsin Territory (now Minnesota) with the slave, and, after living there for a time, had returned to Missouri and sold him.

Scott thereupon sued in a Missouri court to establish his freedom, claiming that his residence in the free state of Illinois and the free Territory of Wisconsin had emancipated him. The first local court sustained his contention, but the decision was reversed on appeal. He was then sold to a man in New York, and began another suit in the federal courts of St. Louis, which promptly ruled against him.

The case was then appealed to the United

States Supreme Court at Washington, where the plaintiff was represented by Montgomery Blair and George Ticknor Curtis, and the defendant by Reverdy Johnson, whom Lincoln had hoped to meet in the McCormick case; and after two elaborate hearings Scott was declared a slave by a divided vote of the judges, two of whom wrote dissenting opinions. This decision of the highest tribunal in the country was expected to settle the slavery issue, for it decreed protection to slave-owners in the enjoyment of their property wherever situated as a constitutional right.

Lincoln, however, promptly challenged the authority of any court to dispose of a great national issue such as the slavery question, and early in the debate with Douglas he forced the discussion of this subject to the fore.

"In the field of argumentative statement, Mr. Webster at the time of his death had no rival in America," says Mr. Boutwell, "but he has left nothing more exact, explicit, and convincing than this extract from Lincoln's first speech in the great debate: *'If any man choose to enslave another, no third man shall be allowed to object,'* which embodies the substance of the opinion of the Supreme Court of the United States in the Dred Scott case."

Douglas instantly responded by declaring that those who resisted the finding of the court were traitors fomenting revolution, and intimated that his adversary's duty as a lawyer was to uphold the law and discountenance resistance to its decrees. But Lincoln's reply was so calm, fair, dignified, and professionally correct that it not only put his accuser completely in the wrong, but placed his opposition on a high and perfectly legal plane.

"We believe as much as Judge Douglas (perhaps more) in obedience to and respect for the judicial department of government," he asserted. *"But we think the Dred Scott decision is erroneous. We know the court that made it has often overruled its own decisions and we shall do what we can to have it overrule this. We offer no resistance to it. If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partizan bias and in accordance with legal public expectation and the steady practice of the departments throughout our history, and had been in no part based on assumed historical facts which are not really true; or if, wanting in some of these, it had been before the court more than once, and had there been affirmed and reaffirmed through a*

course of years, it then might be, perhaps would be, factious, nay, even revolutionary, not to acquiesce in it as a precedent. But when, as is true, we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country."

If Douglas had been permitted to choose his weapons he would doubtless have avoided all legal controversy with his trained opponent; but the situation did not admit of silence, and he was forced to discuss the meaning and effect of the Supreme Court's decision with a master of logic well versed in the maxims and principles of constitutional law. The effect of this was speedily apparent. At the outset of the campaign his victory over Lincoln had seemed an absolute certainty, but, as time wore on, the result began to be questioned, and each meeting with his rival left the outcome in greater doubt. Finally he decided to carry the war into the enemy's country and in an evil moment he propounded a series of questions intended to confuse and embarrass his adversary. Had he remembered Lincoln's searching interpellation of the Polk administration in the

"Spot Resolutions," he might have hesitated in his attempt to bait the ablest cross-examiner in the State; but apparently he did not perceive the opening which he gave to his opponent.

"I will answer these interrogatories," announced Lincoln, when he received the seven questions intended to entrap him, *"upon condition that he* [Judge Douglas] *will answer questions from me not exceeding the same number. I give him an opportunity to respond."*

No reply came from his adversary, and the vast audience at Freeport waited the outcome with a breathless interest which the keen jury lawyer instantly interpreted.

"The judge remains silent," continued Lincoln, impressively. *"I now say I will answer his interrogatories whether he answers mine or not; but after I have done so, I shall propound mine to him."*

Another breathless pause greeted this resistless challenge and then the speaker began reading Douglas's questions. No lawyer who examines them can fail to see that they were so loosely worded as to admit of a negative answer in every instance, rendering them utterly ineffective, and Lincoln disposed of them in this manner. But

having shown that he could in this way technically defeat his opponent's object, he instantly waived the form of the questions and replied to them one after the other as fairly and frankly as any one could desire; and, having done so, he propounded four counter-questions which proved to be the most fatal "cross-examination" or counter-questioning in history.

All the inquiries were adroit, but it was the second which displayed Lincoln as a master of interrogation.

"Can the people of the United States Territory," he asked, *"in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a State constitution?"*

The answer to this question required Douglas *to interpret the Dred Scott decision.* If he replied in the negative, the people of Illinois would repudiate him, because they would not countenance the idea that the mischief had been done and that slavery had already been forced upon the Territories. If, on the other hand, he answered that the Territories were still free to choose or reject slavery, he would have to explain away the Dred Scott decision, which guaranteed

protection to slave property in the Territories as a *constitutional right;* and this would displease the Southern Democracy which was then listening to his every word to determine whether he was or was not a safe Presidential candidate.

The Republican politicians of Illinois were not so astute as Douglas; still they foresaw that he would give a plausible answer to the question which would satisfy the local voters, and they begged Lincoln to withdraw the inquiry. But the far-sighted lawyer who framed it was deaf to their entreaties. "Then you will never be senator!" was the angry warning of one of his advisers. "If Douglas answers," responded Lincoln, calmly, "he will never be President."

The fatal question was therefore left as Lincoln had phrased it, and at the first opportunity Douglas answered by stating that the Territories were still free agents. They could exclude slavery despite the Dred Scott decision, he explained, simply by adopting local police regulations so hostile to slavery that no slave-owner could enjoy his property within their boundaries.

As soon as he had uttered it, Douglas must have seen that his answer involved a gross blunder in law; but if he had any doubt on the matter,

Lincoln speedily dispelled it. How could the *constitutional* right of peaceful enjoyment of slave property guaranteed in the Dred Scott case be canceled by police or any other hostile legislation? he demanded. Any such ordinance or law would be contrary to the constitution *and absolutely void.* Either Judge Douglas's answer or the doctrine of the Supreme Court was bad law, for the one was inconsistent with the other.

But, illogical as it was, this fallacy caught the popular fancy, and Douglas, seeing that it satisfied his constituents, held to it and was elected to the Senate. Nevertheless, as Lincoln anticipated, *his blunder in law cost him the Presidency,* and not long afterward Judah Benjamin, one of the most ardent and able representatives of the South, arraigned him as a renegade and traitor.

"We accuse him for this," he thundered: "that having bargained with us upon a point upon which we were at issue, that it should be considered a judicial point; that he would abide the decision; that he would act under the decision, and consider it a doctrine of the party; that having said that to us here in the Senate, he went home, and, under the stress of a local election, his knees gave way; his whole person trembled. His

adversary stood upon principle and was beaten; and lo, he is the candidate of a mighty party for the Presidency of the United States. The senator from Illinois faltered. He got the prize for which he faltered; but the grand prize of his ambition to-day slips from his grasp because of his faltering in his former contest, and his success in the canvass for the Senate, purchased for an ignoble price, has cost him the loss of the Presidency of the United States!"

Thus two years after Lincoln's question was put and answered Douglas was repudiated by his Southern friends, the Democratic party was split, three candidates instead of one were nominated against the Republicans, and the lawyer whose skill had precipitated this result was triumphantly elected at the polls.

XXIV

AS CANDIDATE

LINCOLN had very little time for the practice of the law during his campaign against Senator Douglas, but he did not, as is generally supposed, wholly abandon his professional duties. In the midst of the debates he tried the Armstrong murder case, his most celebrated cause, and the moment the election was decided he resumed his attendance on the circuit. It was while he was engaged in this work that his friend Jesse Fell, an Illinois politician, met him in the streets of Bloomington, and, drawing him into a deserted law office, seriously suggested that he become a candidate for the Presidential nomination. Mr. Fell had been traveling in the East during the great debates, and had been impressed by the repeated inquiries addressed to him concerning the personal history of the man who was making such a sturdy fight against the famous Illinois senator, and he had reached the conclusion

that Lincoln was a Presidential possibility. No other lawyer in the country had dissected the Dred Scott decision as he had dissected it, either from a legal or from a popular standpoint, and of the thousands who were discussing the slavery question he was the only one whose argument sounded fresh and convincing.

From Maj, Wm. H. Lambert's collection.
Chair used by Lincoln in his law office.
(Destroyed by fire June 4, 1906.)

But Lincoln was not then prepared to take Fell's suggestion seriously, and he declined for the time being to furnish the sketch of his life which his friend requested, and it was not until some months later that he was persuaded to reconsider the matter. On February 27, 1860, he delivered the remarkable address at Cooper Union, New York, which was instantly recog-

nized as the ablest discussion of the slavery issues ever undertaken by a public speaker, and his national reputation dates from that day. The speech which he delivered on that occasion was neither oratorical nor partisan. It was a calm, dispassionate, lawyer-like argument, keyed to the high intelligence of the audience to which it was addressed, and it exhibited Lincoln as a master of all the historical and legal data involved in the subject. No one but a fully equipped lawyer experienced in the handling of facts, and one trained to make their legal bearing clear to the layman by logical analysis, could possibly have held his critical hearers as Lincoln held them, and his triumph was the direct result of three-and-twenty years of service in the courts.

After the Cooper Union address, Lincoln made a short speech-making tour in New England; but except for this work and two speeches in Ohio toward the close of the previous year, he was engaged as usual in his law practice, and 1859 was perhaps the busiest of his professional years. It was within those twelve months that he tried and won the famous Harrison murder case, and during the sessions of the Supreme Court he appeared in no less than ten appeals. For the

Maj. Gen. John M. Palmer

first half of the succeeding year he was apparently equally mindful of his law business, and shortly before the Chicago convention at which he was nominated he argued one of his best-known cases, popularly termed the "sand-bar" case, in the United States Circuit Court. This, however, was the last case he tried.[1]

Two months later the Eighth Circuit was well and ably represented at Chicago by Judge Davis, Leonard Swett, Judge Logan, John M. Palmer, Richard Oglesby, Mr. Herndon, Judge Weldon, and others. These men had gone to the convention determined to procure Lincoln's nomination, and they were well qualified for the work at hand.

"The lawyers of our circuit," wrote Leonard Swett, "went there determined to leave no stone unturned; and really they and some of our State officers and a half-dozen men from various portions of the State were the only tireless, sleepless, unwavering, and ever-vigilant friends he had."

Circumstances aided this little group of lawyers, but they were alive to every opportunity, and, as ex-Vice-President Stevenson pointed out to the writer, it was Lincoln's acquaintance with certain of the Indiana delegates whom he had met

[1]See foot-note, page 261.

while traveling the circuit counties bordering on that State, which proved the opening wedge. Pennsylvania was the next point of attack, but when Lincoln heard talk of a bargain being made with Simon Cameron's followers, he sent positive instructions that no promises should be made in his name and that he would be bound by none. His zealous friends did, however, enter into an agreement with the Pennsylvanians which was destined to cause their principal much embarrassment at a later date, when he found himself virtually committed to appoint Simon Cameron to a cabinet position.

When the moment for nominations arrived, it was N. B. Judd, one of the attorneys for the Rock Island Railroad, and Lincoln's constant legal associate, who placed his name before the convention, and when Caleb Smith, another lawyer, seconded it on behalf of Indiana such a roar of approval burst from the Illinois delegation as was never before heard in any convention hall. "Lincoln has it by sound now; let us ballot!" shouted Judge Logan as soon as he could make himself heard, and on the third ballot the leader of the Illinois bar and the idol of the Eighth Circuit was declared the choice of the convention.

N. B. Judd

Attorney for the Rock Island Railroad who nominated Lincoln for the Presidency

It would perhaps be too much to claim that Lincoln's strategic caution and masterly silence during the eventful months which followed were entirely due to his professional habit, but it cannot be doubted that almost every legal experience demonstrates the wisdom of keeping one's own

From Maj. Wm. H. Lambert's collection
Inkstand used by Lincoln in his law office

counsel, and the fate of the talkative witness who volunteers testimony after his examination is finished was probably not lost upon the Presidential candidate. He had given his testimony in full, his record was open to all who would read it, and despite deep provocation and the urging

of many friendly advisers, he took no part in the fierce campaign which resulted in his election.

From Maj. Wm. H. Lambert's collection

Bookcase and table used by Lincoln in his law office

(Destroyed by fire June 4, 1906)

Even after the contest was over and he was implored to say something to reassure the seceding South, he resisted the temptation to interfere with his predecessor's administration, knowing full well that his advice would be disregarded and that it was hopeless to try to save the situation

with words alone. It reminded him, he said, of one of his experiences on the circuit when he saw a lawyer making frantic signals to head off an associate who was making blundering admissions to the jury, and who continued utterly oblivious to the efforts which were being made to check his ruinous work. "Now, that 's the way with Buchanan and me," was his only comment. "He 's giving the case away and I can't stop him."

As the hour for action drew near and Lincoln was on the eve of departure for Washington, he visited his law office to attend to some business matters.

"After all these things were disposed of," relates Mr. Herndon, "he crossed to the opposite side of the room and threw himself down on the old office sofa, which after many years of service had been moved against the wall for support. He lay there for some moments, his face toward the ceiling, without either of us speaking. . . . He then recalled some incidents of his early practice and took great pleasure in delineating the ludicrous features of many a lawsuit on the circuit. . . . Then he gathered up a bundle of books and papers he wished to take with him, and started to go, but before leaving he made the

strange request that the sign-board which swung on its rusty hinges at the foot of the stairway should remain. 'Let it hang there undisturbed,' he said, with a significant lowering of his voice. 'Give our clients to understand that the election of a President makes no difference in the firm. . . . If I live I 'm coming back some time, and then we 'll go right on practising law as if nothing had ever happened.' . . . He lingered for a moment as if to take a last look at the old quarters, and then passed into the narrow hallway."

Mr. Herndon does not state whether or not the sign remained as his partner requested, but it is certain that to-day there is nothing to mark or honor any of the office sites in the city of Springfield, where Lincoln the lawyer practised during almost a quarter of a century.

XXV

AS PRESIDENT

THE condition of the government when Lincoln reached Washington may fairly be described as chaotic. Bewildered and intimidated by threats of secession, most of the political leaders in the North had lost their heads, and their Babel of incoherencies merely aggravated the hopeless confusion. During the first weeks of December, 1860, at least forty bills, each promising national salvation, were introduced into the House and Senate, and more futile propositions were probably never submitted to a legislative body. Every form of weak-kneed compromise from sentimental sop to abject surrender had its nervous advocate, and between Andrew Johnson's puerile scheme of giving the Presidency to the South and the Vice-Presidency to the North, and vice versa, every alternate four years, and Daniel Sickles's wild-eyed pother about New York city's separation from the Union, every

phase of political dementia was painfully exhibited.

It was not only the mental weaklings who collapsed under the strain. There were men of force and character among the panic-stricken—men who bulked big in the national councils and whose reputation as lawyers and jurists stood firmly established. But in all the discussions concerning the legality of secession there was no note of authority in the utterances of the Union advocates, and the stout assertions of the secessionists for the most part passed unchallenged. Indeed, President Buchanan, who had achieved considerable distinction as a lawyer before his elevation to office, employed his legal talents to such poor advantage that he virtually argued against his own client, noting prohibitions, negations, and general impotency in every line of the Constitution, but not seeing one word of help in it for the government he represented. As Seward remarked, his long and argumentative message to Congress in December, 1860, conclusively proved, first, that no State had the right to secede unless it wanted to, and, second, that it was the President's duty to enforce the law unless somebody opposed him. But Buchanan had the benefit of

Stanton's distinguished, if ineffective, advice in the preparation of that very message, and Seward himself, able lawyer though he was, completely lost his head a few months later, his particular mania taking the suicidal form of averting the civil perils by instigating a foreign war. Other distinguished members of the bar, like Reverdy Johnson, feeling the ground of precedent slipping beneath their feet, stumbled forward shouting vague warnings against illegal steps of any kind, and Horace Greeley, almost beside himself with grief and fear, quavered out empty suggestions for conciliation which only increased the public perplexity.

It was in the midst of all this deplorable helplessness and distraction that Lincoln assumed his duties as head of the crumbling government, and of all the earnest supporters of the Union he alone displayed any calmness or presence of mind, and his inaugural address contained almost the first decisive utterance on the legal aspect of the situation. He was without any national reputation as a lawyer, but his opening words were plainly indicative of his professional attainments.

No State could, of its own motion, lawfully withdraw from the Union, he declared with firm-

ness. It was not necessary that the Constitution should contain any express provision forbidding such action. Perpetuity was implied, if not expressed, in the fundamental law of all national governments. No government proper ever had a provision in its organic law for its own termination. But if the United States was not a government proper, but a mere association of States bound by an agreement in the nature of a contract, then the law of contracts applied. One party to a legal contract might *violate* it, *break* it, so to speak; but mutual consent of all the parties was necessary before it could be lawfully *rescinded.*

Such was his simple, sane, lawyer-like statement of the law—so simple, indeed, that it sounded inadequate to the exigencies of the moment; but nothing in all the learned volumes which have since been written on the legal aspects of secession has ever contradicted or disproved it.

Again with quieting firmness he handled the Dred Scott case, the Fugitive Slave Law, and the other legal questions in dispute, divesting them of all technicalities and disregarding their complicated refinements until he reached the real issues and showed that all the points in controversy could be adjusted by well-recognized prin-

ciples of law. In a word, he placed the secessionists for the first time on the defensive, appealed to the deep law-abiding sentiment of the American people, and afforded the supporters of the Union a firm, legal foothold. He knew the moral effect of a legal authority which the people could understand, and the importance of his clear, prompt announcement can not be overestimated.

But it was when he touched upon the frenzied proposals for compromise that his professional knowledge showed to best advantage. He had been repeatedly advised, after his nomination, to assure the South that he would do nothing to invalidate slavery, and when he refused to make any premature announcement of his policy, some of the knee-shaking compromisers introduced and passed an amendment in Congress to the effect that the Federal Government should never interfere with any domestic institution of the States, including that of persons held in slavery. Those who fathered this amendment firmly believed it would reconcile the South, and considered it of vital importance, while it met with a storm of denunciation from those who regarded it as an absolute surrender of basic principles. But Lincoln instantly saw that such a provision

was powerless for either good or evil, and amounted to nothing more than a reaffirmation of the Constitution. The Federal Government had no power under the Constitution to interfere with any domestic institution of the States, and it was as puerile as it was superfluous to record the fact in a solemnly worded amendment. "Holding such a provision to now be implied constitutional law," Lincoln coolly remarked of the amendment, "I have no objection to its being made express and irrevocable."

This plain, calm and gravely humorous exposition of the legal aspects of the situation shows an experienced lawyer well grounded in the fundamental principles of law, and it effectually stilled the warring factions in the North by demonstrating the emptiness of their dispute.

Indeed, if argument could have averted the impending perils, Lincoln's initial utterance would have carried the day, for no one has ever challenged the findings of fact or overruled the conclusions of law of his first inaugural. It is a masterpiece of pleading which alone should entitle him to high rank in the profession.

A few months after he had given this signal proof of professional ability, circumstances arose

which subjected his legal qualities to a test of almost unparalleled severity, and had he not responded, the history of this country might not read as it does to-day. Shortly after Sumter was fired upon, but before any serious collision had occurred, England and France issued proclamations of neutrality, and this practical recognition of the Confederacy, which aroused public indignation throughout the North, provoked Seward almost beyond endurance, and throwing caution to the winds, the great New York lawyer penned a note of instructions to the American minister in London, couched in such sharp and peremptory language that its presentation to the British authorities must have instantly resulted in the severance of all diplomatic intercourse. But the man to whom the angry Secretary submitted his proposed despatch was a master of self-control, schooled by the discipline of the court-room until he was proof against all provocation, and he calmly redrafted the instrument, in the quiet of his study. In its original form it was a hot-headed rebuke. It left his hands a model of diplomatic remonstrance—dignified and firm, exhibiting the reserve of a wise counselor sure of his own cause, but offering

neither menace nor affront to the parties addressed. No layman could possibly have worded that all-important paper with equal skill, and it is not too much to say that Lincoln's professional caution and astuteness saved a situation fraught with direst national perils. Certainly his interlineations, suggestions, and emendations, as they appear on Seward's manuscript, of themselves afford a lesson in legal sagacity and foresight worthy the closest scrutiny of every student of the law.

The times demanded a lawyer, and a lawyer of ability. The average practitioner would have been appalled by the situation. Menacing legal obstacles were interposed to every act of the administration, new questions presented themselves for consideration at every turn, and a man with a smattering of legal knowledge or no legal knowledge at all might easily have been fretted to impotency by letting I-dare-not wait upon I-would, for precedents were wanting, and in the many imperious demands of the moment timidity or recklessness spelled equal ruin. There was no positive, adjudicated authority for calling out the militia to suppress civil insurrection; there was no express provision supporting

the proclamation of blockade; no precedent could be cited for the muster of the three-year volunteers; and the power of the executive to increase the regular army and navy was seriously disputed, to say nothing of his right to suspend the writ of *habeas corpus*. The conditions were all new, but the situation admitted of no delay. Counsel were not wanting, but the ablest of them differed among themselves, and every shade of opinion was represented in the discussion of these and kindred questions. The extremists, free of all responsibility, were urgent for prompt action, heroic measures, martial law, and every other means, legal or illegal, to effect their purposes; the opposition was untiring in its demands for the judicial interpretation of each letter of the law. Under such circumstances it naturally followed that every exhibition of caution on the part of the administration was denounced as cowardice and every decisive action was hailed as usurpation. True to his training begun in the days when Stuart left him to answer his own questions in the dingy Springfield office, Lincoln did his own thinking on the momentous problems which he encountered, and he solved them without any attempt to shift responsibility for the result. He

Be it enacted by the State of Delaware, that on condition the United States of America will, at the present session of Congress, engage by law to pay, and thereafter faithfully pay to the said State of Delaware, in the six per cent bonds of said United States, the sum of seven hundred and nineteen thousand and two hundred dollars, in five equal annual instalments, there shall be neither slavery nor involuntary servitude, after any time after the first day of January in the year of our Lord one thousand, eight hundred and sixty-seven, within the said State of Delaware, except in the punishment of crime, whereof the party shall have been duly convicted: Provided, that said State shall, in good faith prevent, so far as possible, the carrying of any person out of said State, into involuntary servitude, beyond the limits of said State, at any time after the passage of this act; and shall also provide for one fifth of the adult slaves becoming free at the middle of the year one thousand eight hundred and sixty-two, one fourth of the remainder of said adults, at the middle of the year one thousand eight hundred and sixty-three; one third of the remainder of said adults at the middle of the year one thousand eight hundred and sixty-four; one half the remainder of said adults at the middle of the year one thousand eight hundred and sixty-five; and the entire remainder of adults, together with all minors, at the

From Major Wm. H. Lambert's collection

First draft in Lincoln's handwriting, of a bill for the emancipation of slaves in Delaware

This and the second draft on page 306 were written by Lincoln in November, 1861. The friends of the measure, in Delaware, rewrote one of these drafts, but as the bill was sure to be voted down it was never introduced in the state legislature.

beginning of the year one thousand eight hundred and sixty-seven, as hereinbefore indicated. And provided also that said State may make provision of apprenticeship not to extend beyond the age of twenty-one years for males, nor eighteen for females, for all minors whose mothers were not free, at the respective births of such minors.

listened to advice, but seldom asked it,—one of his notable traits as a lawyer—and no member of his cabinet ever claimed to have exerted any paramount influence upon his actions.

But if the times demanded bold, fearless decision, and firmness, they also necessitated argus-eyed caution and shrewdness.

All the enemies of the Union were not in the Confederate armies, and thousands of sharp, cunning plotters in the North watched eagerly for a legal blunder of which they could take advantage, while they attempted to intimidate Lincoln to inaction by holding before him the direful consequences of a mistake. Indeed, when a bill was introduced into Congress, in 1861, to confirm some of his boldest decisions for which there was no positive legal precedent, it was bitterly opposed by the exponents of this badgering policy and was passed only after a stubborn contest.

But when at last he was clothed with powers

such as few monarchs have ever exercised, when the fate of men and of the very nation itself often depended upon a stroke of his pen, the caution and vigilance born of his long experience at the bar characterized his every action. It would be interesting to hear the confessions of the hundreds who called at the White House with the purpose of obtaining his signature to incriminating documents, only to have their apparently innocent request granted in such manner that it defeated their sinister designs. Almost every line of Lincoln's writing, from the official document to the scribbles on the little calling-cards which he used to answer the thousand-and-one requests of the visitors who thronged his anteroom day after day, shows a master of prudence, acquainted with the dangers lurking in every piece of paper, and able to guard himself against surprise with apparent unconcern.

It was a time when great events often hung upon trifles, when the effective man was he who could tell whom to trust and whom to suspect, and at every crisis and all hours of the day there was a shrewd lawyer in the White House.

It was Lincoln the lawyer as well as the statesman who suggested and urged compensated

emancipation upon the slave-holding States, and who, as counsel for that great cause, himself drew the draft of the bill designed for Delaware, which, had it been generally accepted, would have saved thousands of lives and millions of treasure.

It was Lincoln the lawyer who, against his personal inclinations and the heaviest of moral pressure, resisted every effort of the abolitionists to deprive the South of her property rights without due process of law, and it was not until every legal remedy had failed that he exercised his authority as military commander and issued the Emancipation Proclamation

It was Lincoln the lawyer who, fortified by his experience in hundreds of jury trials, watched the people to whom a mighty issue was being presented, and, by anticipating and interpreting their thought, guided popular opinion, inspired public confidence and at last received the tribute of an unprecedented verdict. It was Lincoln the lawyer who, knowing the crucial point in his cause and keeping it continually in sight, remained serenely sane in the Babel and pressed steadily forward, undiverted and undismayed.

It was Lincoln the lawyer who wrote the State papers which are to-day recognized as models of

Be it enacted by the State of Delaware that on condition the United States of America will, at the present session of Congress, engage by law to pay, and thereafter faithfully pay to the said State of Delaware, in the six per cent bonds of said United States, the sum of seven hundred and ninetien thousand, and two hundred dollars, in ~~thirty one~~ ten equal annual instalments, there shall be neither slavery nor involuntary servitude, at any time after the first day of January in the year of our Lord one thousand eight hundred and ~~ninety three~~ seventy three, within the said State of Delaware, except in the punishment of crime, whereof the party shall have been duly convicted; nor, except in the punishment of crime as aforesaid, shall any person who shall be born after the passage of this act, nor any person above the age of thirty five years, be held in slavery or to involuntary servitude, within said State of Delaware at any time after the passage of this act.

And be it further enacted that said State shall, in good faith prevent, so far as possible, the carrying of any person out of said state, into involuntary servitude beyond the limits of said state at any time after the passage of this act.

And be it further enacted that said State may make provision of apprenticeship, not to extend beyond the age of twenty one years for male, nor eighteen for females, for all minors whose mothers were not free at the respective births of such minors.

From Major Wm. H. Lambert's collection.

Second draft, in Lincoln's handwriting, of a bill for compensated emancipation of slaves in Delaware.

finish and form, not only in his own country, but wherever statecraft is understood, and it was Lincoln the lawyer whose shrewdness and tact not only saved the nation from foreign complications, but paved the way for one of the greatest international lawsuits and most notable diplomatic triumphs—the Alabama arbitration and award.

On the 11th of April, 1865, only four days before his death, Lincoln spoke of the work still to be completed. It was the hour of countless legal questions concerning the status of the seceded states, all based upon the inquiry whether they were still in the Union or out of it, and hot discussions on this delicate point were carrying the disputants far afield. But Lincoln had written that as a peacemaker the lawyer had a superior opportunity of proving himself a good man, and, true to his own teaching, the great advocate waived the quibbling issue aside and passed directly to the heart of the case.

"That question," he remarked, "is bad as the basis of a controversy and good for nothing at all—a merely pernicious abstraction. We all agree that the seceded states, so-called, are out of their proper relation to the Union, and that

On reflection, I like No 2 the better— By it the Nation would pay the State $23.200 per annum for thirtyone years— and

All born after the passage of the act would be born free— and

All slaves above the age of 35 years would become free on the passage of the act— and

All others would become free on arriving at the age of 35 years, until January 1893— — when

All remaining of all ages would become free, subject to apprenticeship for minors born of slave mothers, up to the respective ages of 21 and 18.

If the State would desire to have the money sooner, let the bill be altered only in fixing the time of final emancipation earlier, and making the annual instalments correspondingly fewer in number, by which they would also be correspondingly larger in amount— For instance, strike out "1893," and insert "1892," and strike out "thirtyone" annual instalments, and insert "ten" annual instalments. The instalments would then be $1.920. instead of $23.200 as now— In all other particulars let the bill stand praising as it is.

From Major Wm. H, Lambert's collection.

Lincoln's comments on the proposed measure of compensated emancipation in Delaware.

the sole object of the government, civil and military, in regard to those States is to again get them into that proper relation. . . . . Finding themselves safely at home, it would be utterly immaterial whether they had ever been abroad. Let us all join in doing the acts necessary to restoring the proper practical relations between these States and the Union, and each forever after innocently indulge his own opinion whether in doing the acts he brought the States from without into the Union, or only gave them proper assistance, they never having been out of it."

Reading those words, who can doubt that it would have been Lincoln the lawyer who would have proved the genius of reconstruction had he been allowed to live and help "bind up the nation's wounds?"

In the Oak Ridge Cemetery at Springfield an imposing pile of masonry marks the spot where Lincoln lies. It is embellished with mighty groups in bronze representing the glamour and heroics of war—soldiers and sailors dying and dealing out death—pain, horror, defiance, and rage depicted on their faces.

But among all these symbols of "valiant dust"

one looks in vain for some recognition of the lawyer, jurist, and statesman, whose whole life-work was an appeal to men's reason and the highest motives of humanity, whose only weapons were argument and persuasion, and who ever invoked Justice and never the God of Battles for the triumph of his cause.

APPENDICES

I

ILLINOIS SUPREME COURT MEMORIAL

On Wednesday, May 3, 1865, the Supreme Court of Illinois convened in the court room at Ottawa to honor the memory of Abraham Lincoln. The full bench was present in the persons of Hon. P. H. Walker, Chief Justice; Hon. Sidney Breese and Hon. Charles B. Lawrence, Associate Justices, and the proceedings are reported in 37 Illinois, Supreme Court Reports, page 1.

As a rule, memorial addresses are not the best evidence for historical purposes, but the men who spoke upon this occasion were so intimately acquainted with Mr. Lincoln's professional life that their estimates of him as a lawyer cannot be disregarded.

The Hon. J. D. Caton, formerly Chief Justice of the court, spoke in part as follows:

" . . . . For nearly thirty years Mr. Lincoln was a member of this bar. But few of us are left who preceded him. From a very early period he assumed a high position in his profession. Without the advantage of that mental culture which is afforded by a classical education, he learned the law as a science. Nature endowed him with a philosophical mind, and he learned and appreciated the elementary principles of the law and the reasons why they had become established as

such. He remembered well what he read because he fully comprehended it. He understood the relation of things, and hence his deductions were rarely wrong from any given state of facts. So he applied the principles of the law to the transactions of man with great clearness and precision. He was a close reasoner. He reasoned by analogy and usually enforced his views by apt illustrations. His mode of speaking was generally of a plain and unimpassioned character, and yet he was the author of some of the most beautiful and eloquent passages in our language, which, if collected together, would form a valuable contribution to American literature. Those who supposed Mr. Lincoln was destitute of imagination or fancy knew but little of his mental endowments. In truth his mind overflowed with pleasing imagery. His great reputation for integrity was well deserved. The most punctilious honor ever marked his professional and private life. He seemed entirely ignorant of the art of deception or of dissimulation. His frankness and candor were two great elements in his character which contributed to his professional success. If he discovered a weak point in his cause, he frankly admitted it, and thereby prepared the mind to accept the more readily his mode of avoiding it. I venture the assertion that no one ever accused him of taking an underhanded or unfair advantage in the whole course of his professional career. He was equally potent before the jury as with the court" . . . .

Mr. Justice Breese on behalf of the bench responded as follows:

". . . . It becomes us to speak of him only as a man

and as a lawyer—as a member of an honorable profession from whose ranks have been taken in times of the greatest emergency men whose high destiny it has been not only to guide the car of victory, but to sustain the weight of empire. . . . . Not deeply read in his profession, Mr. Lincoln was never found deficient in all the knowledge requisite to present the strong points of his case to the best advantage, and by his searching analysis, make clear the most intricate controversy. He was, besides, an honest lawyer practising none of the chicanery of the profession to which he was devoted, nor any of those mean and little and shuffling and dishonorable arts all do not avoid; nor did he seek an advantage over his adversary to which he was not fairly entitled by the merits of his cause and by the force of his arguments. With an exterior by no means polished, with nothing in the outward man to captivate, there was that within him, glowing in his mind, which enabled him to impress, by the force of his logic, his own clear perceptions upon the minds of those he sought to influence. He was, therefore, a successful lawyer, but bore with humility the distinction he had won. For my single self I have for a quarter of a century regarded Mr. Lincoln as the fairest lawyer I ever knew, and of a professional bearing so high-toned and honorable as justly and without derogating from the claims of others, entitling him to be presented to the profession as a model well worthy of the closest imitation." . . . .

The court then adjourned for two days as a mark of respect.

II

LINCOLN'S CASE AGAINST THE ILLINOIS CENTRAL R.R.

The facts in regard to Mr. Lincoln's suit against the Illinois Central Railroad Company being in dispute, and the officials of that company having submitted to the writer all the proofs in their possession, it is only proper that both sides of the question should be fully stated.

The railroad contends in its publication entitled "Abraham Lincoln as Attorney for the Illinois Central Railroad" that it did not refuse to pay its counsel's charges and that there was no substantial dispute between them. According to the pamphlet, Mr. John Douglas, the general counsel of the road, advised Mr. Lincoln that if he paid a fee of $5,000 to a western country attorney without protest it would embarrass him with the Board of Directors, "who would not understand as would a lawyer the importance of the case and the consequent value of Mr. Lincoln's services." It was, therefore, arranged that Mr. Lincoln should bring a friendly suit against the road and whatever sum should be allowed by the court and jury would be paid without appeal. Mr. Lincoln, it is alleged, had himself been in some doubt as to what to charge and had originally suggested $2,000, but Messrs. Dubois & Miner of the State

Auditor's office urged him not to suggest less than $5,000, and he finally made out and mailed to the company a voucher for that amount.

The suit subsequently instituted to collect this fee was tried before Mr. Justice Davis and jury in June, 1857. No witnesses were examined, but by consent of counsel a statement was read to the jury, signed by the most prominent lawyers in Illinois certifying that Mr. Lincoln's charge was reasonable, and after a brief speech by the plaintiff in person a verdict was recorded for the full amount. Mr. Douglas was not present during this so-called trial, having been delayed in reaching the court room, and when he arrived and asked that the case be reopened so that he might not appear to be in default, his request was granted and on the second trial, which occurred a few days later, the sum of $200 already received by Mr. Lincoln as a retainer, was credited to the defendant and verdict rendered for $4,800 and costs from which an appeal was allowed, but never perfected, and the judgment was finally paid in full. Several members of the Illinois bar who are now living and who were present in the court room testify that the conduct of the trial was extremely informal and otherwise confirm this part of the story.

The representatives of the railroad further call attention to the fact that Mr. Lincoln received a pass as counsel for the railroad on December 31, 1857, after the institution of his suit, and that he apparently continued to represent the company up to the time when he was elected to the presidency. All this, it is maintained, demonstrates that the corporation never refused to pay

Mr. Lincoln's charges—that the litigation was a friendly formality and that the relations between counsel and client were not affected thereby.

There is, however, another version of the facts. It has been asserted by Lincoln's law partner, Herndon, who states that he received half the fee, that Lincoln originally put in a bill for $2,000, which was rejected by the company's officials with the comment that that was as much as a first-class lawyer would charge, which reply resulted in Lincoln's withdrawal of the bill and a prompt suit against the company for the full value of his services, which he placed at $5,000, he and his partner "thanking the Lord" that the avaricious corporation had "fallen into their hands." This statement has often been quoted since it was first published many years ago and it has not, until recently, been contradicted. If it depended wholly upon Herndon's evidence, it might perhaps be disregarded, for its tone and inaccurate details are suspicious circumstances, but there is corroboration, for Mr. Lincoln's "declaration" or complaint goes far to demonstrate that the defendant *did* refuse to pay his charges. In this document, which is in his own handwriting, after setting forth his claim for $5,000, he continues "yet the said defendant (although often requested so to do) has not, as yet, paid said sum of money or any part thereof, *but so to do has hitherto wholly neglected and refused, and still does neglect and refuse.*" Of course, it may be claimed that this language and the corporation's written denial of the debt (in its answering plea) were mere formalities. Nevertheless, it is well known that

lawyers dislike to sue for their services, no matter how just their charges may be, as such action always opens them to the accusation of having made an unreasonable claim and places them, to that extent, in a false position, and it is not probable that Lincoln relished this disposition of his account. Certainly the client who thus refers his lawyer to the courts for satisfaction has no reason to complain if the action is misunderstood.

Moreover, the reason assigned for the Illinois Central's action in Lincoln's case—that the Board of Directors would not be able to comprehend the importance and value of his services without the aid of a jury—is not complimentary, either to the intelligence or the sincerity of the Board, nor is it otherwise convincing. However, the evidence being conflicting, the defendant is entitled to whatever benefit there is in the doubt.

III

LINCOLN'S CASES IN THE ILLINOIS COURT OF LAST RESORT

THE following is a list of Mr. Lincoln's cases in the Supreme Court of Illinois—the highest appellate tribunal in the state—showing a record rarely, if ever equaled in his day.

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